UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/80
9 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Working group of intergovernmental experts
on the human rights of migrants
Third session, 23-27 November 1998
Fourth session, 8-12 February 1999
Item 14 (a) of the provisional agenda

SPECIFIC GROUPS AND INDIVIDUALS

MIGRANT WORKERS

Report of the working group of intergovernmental experts on the human rights of migrants, submitted in accordance with Commission on Human Rights resolution 1998/16

Chairman-Rapporteur: Mr. Jorge A. Bustamante (Mexico)

GE.99-11282 (E)

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Introduction

1. At its fifty-fourth session, the Commission on Human Rights, in its resolution 1998/16, decided to reconvene the working group of five intergovernmental experts on the human rights of migrants, on the same basis as set out in paragraph 3 of Commission resolution 1997/15, to meet for two periods of five working days prior to the fifty-fifth session of the Commission.

2. The Commission requested the working group of intergovernmental experts to submit a report to the Commission on Human Rights at its fifty-fifth session. The present report is submitted in response to that request.

I. ORGANIZATION OF THE THIRD SESSION

Opening and duration of the session

3. The third session of the working group of intergovernmental experts on the human rights of migrants was held at the Palais des Nations, Geneva, from 23 to 27 November 1998. The session was opened by the Chief of the Support Services Branch of the Office of the High Commissioner for Human Rights.

Composition of the working group

4. The working group at its third session consisted of the following five experts: Mr. Jorge Bustamante (Mexico), Mr. Guillaume Pambou Tchivounda (Gabon), Mr. Joaquim Ludovina do Rosario (Portugal), Mr. Bimal Ghosh (India), Mr. Oleg V. Shamshur (Ukraine). Mr. Bimal Ghosh was nominated by the outgoing Chairman of the fifty-fourth session of the Commission on Human Rights to replace Mr. M. Mijarul Quayes, at the request of the Asian Group. Mr. Oleg V. Shamshur was absent for the entire duration of the third session.

Election of officers

5. At the 1st meeting of the third session, on 23 November 1998, the working group elected Mr. Jorge A. Bustamante (Mexico) Chairman-Rapporteur for its third and fourth sessions.

Adoption of the agenda

6. Also at the 1st meeting, the working group, on the basis of the provisional agenda (E/CN.4/AC.46/1998/6), adopted the following agenda for its third session:

1. Election of officers.

2. Adoption of the agenda.

3. Implementation of Commission on Human Rights resolution 1998/16, entitled "Migrants and human rights".

Observers

7. Representatives of the following States members of the Commission on Human Rights attended the third session as observers: Bangladesh, Brazil, Chile, China, Cuba, Czech Republic, Ecuador, El Salvador, France, Guatemala, India, Indonesia, Italy, Japan, Malaysia, Mexico, Morocco, Pakistan, Peru, Philippines, Poland, Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

8. Representatives of the following other States Members of the United Nations also attended the session as observers: Bahrain, Colombia, Croatia, Egypt, Estonia, Ethiopia, Iran (Islamic Republic of), Kyrgyz Republic, Latvia, Paraguay, Portugal, Singapore, Spain, Syrian Arab Jamahiriya, Thailand, Turkey.

9. The following non-member State of the United Nations was also represented by an observer: Holy See.

10. Representatives of the following intergovernmental organization attended the session as observers: International Organization for Migration.

11. The International Committee of the Red Cross was also represented by an observer.

12. Representatives of the following non-governmental organizations in consultative status with the Economic and Social Council attended the session as observers: Canadian Council of Churches, Caritas Internationalis, Conference of European Churches, International Federation of Human Rights Leagues, International Movement against all Forms of Discrimination and Racism, International Service for Human Rights, Women's International League for Peace and Freedom, World Council of Churches, World Young Women's Christian Association.

13. Representatives of the following non-governmental organization without consultative status with the Economic and Social Council also attended the session as observers: SIRDO - Romanian Independent Society for Human Rights.

Documentation

14. The working group at its third session had before it documents issued for its first and second sessions, as well as a working paper (E/CN.4/AC.46/1998/5) prepared by Mr. Jorge Bustamante.

15. The working group also had available for consultation various reports, publications, articles and other papers relevant to its mandate collected by the secretariat or received from various sources.

Organization and methods of work

16. With regard to its methods of work, the working group decided to work in a combination of public and closed meetings. The working group held six public meetings and four closed meetings.

17. At the 1st plenary meeting, the Chairman-Rapporteur proposed a draft timetable for the organization of the work of the third session, which was adopted. The timetable was based on the programme of work adopted by the working group at the end of its second session (E/CN.4/1998/76, annex II).

18. In the course of public meetings, the working group held an exchange of views in the context of its mandate and received contributions from Governments, United Nations organs and intergovernmental and non-governmental organizations.

19. The working group decided to submit to the Commission on Human Rights at its fifty-fifth session a consolidated report covering the work of its third and fourth sessions.

II. MAIN ISSUES DISCUSSED DURING THE THIRD SESSION

A. Document E/CN.4/AC.46/1998/5

1. Oral presentation

20. At the 1st plenary meeting, Mr. Jorge Bustamante, speaking in his capacity as an expert member of the working group, presented his working paper, contained in document E/CN.4/AC.46/1998/5. He explained that the working paper was an analysis of the responses sent to the working group by Governments, intergovernmental and non-governmental organizations to the questionnaire (E/CN.4/1998/76, annex I) designed by the working group at the close of its first session in 1997. The working paper was divided into two parts, the first entitled "A conceptual frame of reference about the vulnerability of migrants as subjects of human rights", the second, "The question of obstacles".

21. The main premise of the working paper was that the basic human rights of migrants were violated because of their structural vulnerability. They were a vulnerable group, like indigenous populations and minorities, and lacked protection. The question, then, was how to guarantee them the enjoyment of their human rights. Mr. Bustamante said that he had been inspired by the words of the High Commissioner for Human Rights in her address at Oxford University in 1997: "one lesson we need to learn, and to reflect in our approach, is that the essence of rights is that they are empowering". It was precisely the task of the working group to explore ways in which migrants could be empowered so that their human rights would be respected in practice.

22. He stressed that it had become clear from the replies received that there was awareness on the part of States and non-governmental organizations of the increasing extent and intensity of human rights violations of migrants. The horrors of trafficking, abuse of agricultural workers and the isolation of domestic workers were daily occurrences. Despite that level of awareness and concern very few States had ratified the 1990 Convention on migrants.

2. Reactions to document E/CN.4/AC.46/1998/5

23. Mr. Ghosh congratulated Mr. Bustamante on his working paper and agreed that the infringement of the basic human rights of migrants was closely linked to their vulnerability, resulting from their relative powerlessness in a

foreign country. Where there was an absence of power-sharing, the risk was that the dominant party would exploit the weaker. He cautioned, however, against any attempts at addressing the issue of power differential within the rigid framework of the North-South divide, since it cut across country groupings based on stages of development. Indeed, more and more countries, in the North as in the South, were increasingly both receiving and sending migrants, and their nationals could be either dominant or dominated.

24. Another dimension of the problem was the gap between the capacity of a State to respect human rights and its willingness to do so. Some States could and would respect human rights standards, while others lacked the capacity and/or willingness. It was not enough that a country simply ratify the relevant human rights instruments. It must also ensure their effective application. Even when a State had ratified a human rights convention, it might fail to implement it fully, either because it lacked the political will or because it did not have the necessary capacity. That made external monitoring of the situation, including a systematic diagnosis of the causes of non-implementation of standards, critically important.

25. He drew the attention of the working group to the alarming rise of the so-called "informal economy" in developed countries. In the 1970s, the informal sector had accounted for, on average, only about 5 per cent of Western Europe's gross national product, while in 1998, it had risen to 17 per cent. He warned that that sector had been increasingly attracting immigrant workers, who were mostly irregular, docile and, therefore, extremely vulnerable, and that, at the same time, it remained largely out of the control of States with regard to the protection of basic human and workers' rights.

26. He agreed with the suggestion that NGOs, particularly the migrants' associations in both sending and receiving countries, could play an important role in protecting the rights of migrant groups. In that connection, he raised the issue of due recognition of such associations by the States concerned, based on an agreed set of rules designed, inter alia, to ensure their democratic functioning, transparency and, thus, overall credibility and legitimacy.

27. Mr. Pambou Tchivounda also congratulated Mr. Bustamante. He pointed out that the working paper focused mainly on vulnerability as opposed to obstacles and remedies, but he appreciated the conceptual framework used.

28. He commended what the High Commissioner had said in Oxford. He considered that the words "the essence of rights is the power that they confer" should be mentioned in all international instruments. However, reality was closer to the fact that those who had power were likely to use it and abuse it. That could be the case for States or for groups of individuals.

29. He gave as an example a situation in his own region which, he believed, could not be ignored. The richest area of ex-Zaire, now the Democratic Republic of the Congo, had experienced a very large influx of persons from neighbouring countries; those persons were now requesting the independence of that area. Such a development gave rise to concern.

30. He wondered whether existing international instruments included sufficient provisions for the protection of the human rights of migrants and remedies when those rights had been violated.

31. Mr. do Rosario joined the other members in his appreciation of the working paper prepared by Mr. Bustamante. He agreed that vulnerability was the core issue and the condition characterizing migrants.

32. The relationship between non-integration and vulnerability was a crucial one. Persons with problems of integration were obviously the most vulnerable. A key issue for the working group's consideration should therefore be integration and the role that could be assumed by States, intergovernmental and non-governmental organizations and migrants associations in receiving and sending countries.

33. At the 1st, 2nd, 3rd and 5th plenary meetings the observers for Mexico, the Czech Republic, Bangladesh, Turkey, El Salvador, France, the Holy See, Peru, Spain, Ecuador, Egypt and Colombia, as well as the observers for the International Organization for Migration and the World Council of Churches, commended Mr. Bustamante on his working paper.

B. General comments made during plenary meetings or received at the end of the third session

34. Several observers referred to new developments that had occurred in their own countries since the previous session of the working group. The observer for France provided exact figures, by country of origin, for non-nationals currently residing in France and mentioned that efforts had been made to regularize the situation of irregular migrants (over 70,000 individuals since 1997). The observer for Turkey mentioned legislative changes with respect to the length of time for which residence permits were issued and announced that Turkey would soon become a party to the 1990 Convention on migrants.

35. Some delegations felt that clear distinctions should be drawn between regular migrants and irregular or undocumented migrants. One delegation was of the view that, since the specific circumstances of illegal entry or illegal stay in the host country might have as a consequence lawful limitations of certain rights of illegal migrants, it was necessary to study and deal with the issue of illegal migrants separately. A distinction also had to be drawn between the two groups in relation to possible remedies for violations of the human rights of immigrants. For instance, dignified and human return to the sending country might be an appropriate solution in the case of most illegal immigrants, whereas return should be considered in a different light as far as legal and, in particular, long-term migrants were concerned. Other delegations considered that what was important was to focus on the human rights of migrants as a whole, be they regular or not. Whichever position was held, all agreed that the fundamental principle of State sovereignty should not be called into question.

36. Another topic of discussion was State responsibility and whether the working group should confine itself to the responsibility of receiving States or should include the responsibility of sending countries, particularly with regard to women and children. Obstacles and solutions in the host country

could not always be disentangled from obstacles and solutions elsewhere. One delegation was of the opinion that limiting the task of the working group to addressing the question of the human rights of migrants in receiving countries was not desirable. Migration should be seen as a process involving sending countries and receiving countries. The working group naturally could not study migration in its whole scope. It should, however, try to identify typical, frequent and grave violations of the human rights of migrants, notwithstanding at which stage of the migration process they took place. The delegation stressed that, not only host countries but also Governments of the sending countries had responsibilities with regard to migrants, such as the duty to readmit their own nationals.

37. Several observers listed what they considered to be the major obstacles existing to the effective and full protection of the human rights of migrants. Those obstacles were included in a draft table (see annex 1) which was prepared by the working group and which became the subject of general discussion during the third session. The working group decided to include in the table a human rights framework using basically the Universal Declaration of Human Rights because of its universal authority and because of the current absence of a systematic in-depth analysis of the scope of the provisions in international instruments which could be applied to migrants.

38. The importance was emphasized of informing public opinion properly in order to avoid the development of racist behaviour, the labelling of migrants as "deviants" and the use of them as scapegoats, and also as a means of facilitating the integration of migrants in receiving countries.

C. Highlights of private meetings

39. The members of the working group decided to share with all participants the following highlights of their deliberations in closed meetings:

(a) The working group considers that its mandate is not to deal with all aspects of international migration and human rights, and finds it desirable to limit its tasks to the question of the human rights of migrants in receiving countries, taking into account the fifth preambular paragraph of Commission on Human Rights resolution 1998/16, which reads as follows: "Bearing in mind the situation of vulnerability in which migrants frequently find themselves, owing, among other things, to their absence from their State of origin and to the difficulties they encounter because of differences of language, customs and culture";

(b) In some countries, integration is seen as one of the main ways of solving problems of the violation of the human rights of migrants. The working group considers that integration, while a valuable potential means of enhancing the empowerment of migrants, cannot be applied to cases such as "circular or seasonal" labour migration and, therefore, cannot be the sole means of achieving empowerment. Further, the issues of integration and of protection of basic rights are not exactly identical. For example, while the former remains primarily a matter of domestic policy, the latter transcends national frontiers and has emerged as a global concern;

(c) The working group fully respects the right of States to sovereignty, in accordance with the Charter of the United Nations, in particular the sovereign right to decide who should or should not enter their territories;

(d) The basic human rights of migrants have to be respected, even if they are irregular migrants.

III. UNITED NATIONS PROTECTION OF MIGRANTS THROUGH SEVERAL OF ITS HUMAN RIGHTS INSTRUMENTS AND A MECHANISM OF THE COMMISSION ON HUMAN RIGHTS

40. At the invitation of the working group, members of treaty bodies, of the Working Group on Arbitrary Detention and of the secretariat gave briefings about the work of treaty bodies in relation to migrant issues and answered questions posed by the intergovernmental experts of the working group and by observers.

A. Committee on Economic, Social and Cultural Rights

41. Mr. Philip Alston, Chairman of the Committee on Economic, Social and Cultural Rights, said that the International Covenant on Economic, Social and Cultural Rights was not restricted in its application to nationals of the ratifying State. There was no reason why migrants, be they in a regular or in an irregular situation, should be excluded. When analysing State reports, the Committee had insisted on posing questions concerning the treatment of migrants and their human rights situation. He pointed out, however, that the Committee focused on a wide range of rights in relation to a wide number of vulnerable groups and could not devote as much time as a specialized committee to problems faced by migrants.

42. Mr. Javier Wimer, a member of the Committee, stressed that migrants were unjustly targeted as criminals. He welcomed the existence of the working group, convinced that the increasing flow of migrants required urgent attention at the international level.

B. Human Rights Committee

43. Mr. Francisco José Aguilar-Urbina, Chief of the Support Services Branch of the Office of the High Commissioner for Human Rights (OHCHR) and former Chairman of the Human Rights Committee, spoke about the differences in function between that organ and the Committee on Economic, Social and Cultural Rights, in particular the fact that individual communications could be dealt with by the Human Rights Committee, in accordance with the Optional Protocol to the International Covenant on Civil and Political Rights. That Covenant applied to all persons under the jurisdiction of the ratifying State, be they nationals or not. Furthermore, article 2 of the Covenant compelled States to take steps, whether legislative, administrative or other, to give effect to the rights in the Covenant as soon as they became parties to it. Article 26 on non-discrimination did not differentiate between nationals and foreigners. Nevertheless, political rights were not usually recognized for foreigners. The only article establishing a difference between regular and irregular

migrants was article 13, which referred to the issue of expulsion. The Committee had considered immigration matters in general when dealing with State reports.

C. Committee on the Rights of the Child

44. Mrs. Soussan Raadi-Azarakhchi, a staff member of OHCHR, recalled that the Convention on the Rights of the Child had been ratified by 191 States (only two States in the world had not ratified it). The Convention encompassed a very large number of economic, social, cultural, civil and political rights. Four main principles guided the work of the Committee: (i) the principle of non-discrimination, (ii) the principle of the best interests of the child, (iii) the right to life, development and survival and (iv) respect for the views of the child. In that context, when considering a State report the Committee focused on children in difficult situations, including children of migrants. Those children, like all children, were entitled to protection against abuse. As an outcome of the dialogue it held with States, the Committee adopted concluding observations in which it generally called for measures to protect and promote the rights of children, including migrants' children, better. Among recommendations of specific relevance to such children, the Committee had: (i) emphasized that children were entitled to have access to educational, health and social services; (ii) appealed to States to change their legislation and to adhere to the 1990 Convention on migrants; (iii) given the principle of family reunification special attention; and (iv) proposed that special educational measures be taken to train future professionals who would be well prepared to educate migrant children.

D. Committee on the Elimination of Racial Discrimination

45. Mr. Robert Husbands, a staff member of OHCHR, said that article 1, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination accepted that States would differentiate between nationals and non-nationals. However, the Committee had adopted a general recommendation in 1993 clearly indicating that States had the obligation to report on the situation of foreigners under their jurisdiction; and another in 1996 on the rights of refugees and displaced persons under the Convention. The Committee had adopted a broad interpretation of the term "racial discrimination" in order to include many vulnerable groups within its mandate.

E. Working Group on Arbitrary Detention

46. Mr. Petr Uhl, a member of the Working Group on Arbitrary Detention, recalled that the Commission on Human Rights, in its resolution 1997/50, had requested the Working Group to collect information concerning the situation of immigrants and asylum seekers who were allegedly being held in prolonged administrative custody without the possibility of administrative or judicial remedy. In accordance with the mandate which had been conferred on it by the Commission, the Working Group had undertaken missions to the United Kingdom of Great Britain and Northern Ireland and Romania. The reports prepared following those missions would be submitted to the Commission at its fifty-fifth session. Mr. Uhl stressed the importance and necessity of urgent consideration of questions relating to persons who had sought asylum.

F. Reactions to the existing protection of migrants at the international level

47. At the 5th plenary meeting the observers for Mexico, Colombia, Egypt, Cuba, Peru, the Czech Republic, Paraguay, France, India, Guatemala and Turkey, as well as for the Holy See, the International Organization for Migration, the World Council of Churches and Caritas Internationalis expressed appreciation of the oral presentations concerning the implementation of the core international human rights instruments. All speakers agreed that although the treaty bodies addressed a considerable number of issues that affected migrants, they had no focused or consistent approach towards that very specific vulnerable group. Several delegations expressed the view that that demonstrated the wisdom of having elaborated the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the other core instruments not focusing specifically on migrants.

48. Regretting that the 1990 Convention had not yet entered into force, an overwhelming majority of speakers felt the need to establish some kind of monitoring and protection mechanism. That mechanism, which could be, inter alia, a special rapporteur/independent expert or an expert group, could carry out the following functions:

(a) Monitor the development of obstacles hindering the enjoyment by migrants of their human rights, on the basis of communications received from alleged victims, individuals and non-governmental organizations, etc.;

(b) Initiate a dialogue with concerned States, and in the light of that dialogue, submit an annual report to the Commission on Human Rights containing recommendations;

(c) Play an advocacy role concerning the human rights of migrants and report to the Commission on an annual basis on one of a number of themes, such as regional arrangements, administrative processes, the role of civil society, political parties, the media etc.;

(d) Identify existing norms and standards as they related specifically to the human rights of migrants, with a view to listing those norms and suggesting appropriate follow-up measures;

(e) Coordinating the efforts of the Commission on Human Rights with those of the Office of the High Commissioner for Human Rights, the International Organization for Migration, the International Labour Organization and non-governmental organizations working in the field of the human rights of migrants.

49. The delegation of France reserved its position on the proposal to establish a new mechanism and stressed the need to explore means of sensitizing the existing mechanisms to the question of migrants. If a new mechanism was in fact established, it should complement the existing mechanisms. The delegation also recalled the ongoing studies on reform of the mechanisms of the Commission on Human Rights; the purpose of the reform was to make them more rational and more effective, and that must be taken into account.

IV. ORGANIZATION OF THE FOURTH SESSION

Opening and duration of the session

50. The fourth session of the working group of intergovernmental experts on the human rights of migrants was held at the Palais des Nations, Geneva, from 8 to 12 February 1999. Mr. Jorge A. Bustamante (Mexico) continued to act as Chairman-Rapporteur. All the members were present at all the meetings.

Adoption of the agenda

51. At the 1st meeting the working group, on the basis of the provisional agenda (E/CN.4/AC.46/1999/1), adopted the following agenda for its fourth session:

1. Adoption of the agenda.

2. Implementation of Commission on Human Rights resolution 1998/16, entitled "Migrants and human rights".

Observers

52. The following States members of the Commission on Human Rights attended the session as observers: Argentina, Austria, Bangladesh, Brazil, Canada, China, Colombia, Cuba, Ecuador, El Salvador, France, Germany, India, Italy, Japan, Latvia, Mexico, Morocco, Norway, Pakistan, Peru, the Philippines, Poland, Romania, the Russian Federation, South Africa, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay, Venezuela.

53. The following other States Members of the United Nations also attended the session as observers: Denmark, Egypt, Estonia, Ethiopia, Iran (Islamic Republic of Iran), Lithuania, Paraguay, Portugal, Spain, Sweden, Turkey.

54. The following non-member State of the United Nations was also represented by an observer: Holy See.

55. A representative of the following intergovernmental organization attended the session as an observer: International Organization for Migration.

56. A representative of the following United Nations body attended the session as an observer: Office of the United Nations High Commissioner for Refugees (UNHCR).

57. A representative of the following specialized agency attended the session as an observer: International Labour Organization (ILO).

58. Representatives of the following non-governmental organizations in consultative status with the Economic and Social Council attended the session as observers: Association of World Citizens, Caritas Internationalis, Centro di Ricerca e Documentazione Febbraio 74 (CERFE), Commission of the Churches on International Affairs of the World Council of Churches, Human Rights Advocates, International Catholic Migration Commission, International

Commission of Jurists, International Confederation of Free Trade Unions, International Movement against All Forms of Discrimination and Racism, International Service for Human Rights, World Vision International.

59. Representatives of the following non-governmental organizations without consultative status with the Economic and Social Council attended the session as observers: Migrants Rights Watch, Solidaritas Perempuan (Women's Solidarity for Human Rights).

Documentation

60. The working group at its fourth session had before it documents issued for its first, second and third sessions, as well as further replies to the questionnaire of the working group:

E/CN.4/AC.46/1998/3/Add.53	Submission from Spain
E/CN.4/AC.46/1998/3/Add.54	Submission from the Netherlands
E/CN.4/AC.46/1998/3/Add.55	Submission from the United Arab Emirates
E/CN.4/AC.46/1998/3/Add.56	Submission from Finland
E/CN.4/AC.46/1998/3/Add.57	Submission from the Sudan
E/CN.4/AC.46/1998/3/Add.58	Submission from Malta
E/CN.4/AC.46/1998/3/Add.59	Submission from Honduras
E/CN.4/AC.46/1998/3/Add.60	Submission from Colombia
E/CN.4/AC.46/1998/3/Add.61	Submission from Paraguay
E/CN.4/AC.46/1998/3/Add.62	Submission from Morocco

Organization and methods of work

61. With regard to its method of work, the working group decided to work in a combination of public and closed meetings. The working group held five public meetings and four private meetings.

62. At the 1st plenary meeting, the Chairman-Rapporteur proposed a draft timetable for the organization of the work of the fourth session, which was adopted. The timetable was based on preliminary recommendations drafted by the experts during the period between the third and fourth sessions. These recommendations included measures to achieve equality in law and practice, to disseminate information through the media and civil society, to combat trafficking and to monitor the protection of migrants at the international level.

63. In the course of public meetings, the working group held an exchange of views on those preliminary recommendations.

64. In the course of private meetings, the experts adopted their findings on obstacles, as contained in section VI below, and recommendations, as contained in section VII below.

65. A separate meeting was held for representatives of intergovernmental organizations and of non-governmental organizations wishing to express collectively their support for the work of the working group, their willingness to provide assistance and their wish to participate actively in the debate on recommendations.

V. MAIN ISSUES DISCUSSED DURING THE FOURTH SESSION

66. Most observers underlined the immense amount of work still to be done in order to gather information regarding the human rights situation of migrants, to promote their human rights and to monitor violations. There was an emerging consensus on the need to continue to focus attention on the specificity of the problems faced by migrants. It was generally recognized that the 1990 Convention on migrants provided the needed framework for the protection and enjoyment of the human rights of migrants and their families. However the Convention had not yet entered into force and efforts to promote its ratification should be intensified. Those observers supported the appointment by the Commission of a special rapporteur for a period of three years to advocate, promote and monitor the protection of the human rights of migrants. They contributed to the drafting of recommendations by suggesting wording and ideas.

67. Several observers reiterated that migrants' rights were a crucial test of the indivisibility and universality of human rights and that migrant issues were cross-cutting. They referred to the need to analyse further the particular situations of different groups of migrants: women, children, qualified migrants, etc. but agreed that basic human rights applied to all.

68. Some delegations expressed concern that the preliminary recommendations regarding economic and labour market policies did not address sufficiently the complexity of unemployment in receiving countries and the need to find long-term solutions for irregular migration through recognition of shared responsibility. Others referred to the need for formulating precise recommendations in order to inspire action on the part of the Commission on Human Rights.

69. Several NGO delegations referred to precise cases of violations of the human rights of migrants and expressed their agreement that there was a need to take concrete steps to address human rights violations at the international level which would encourage States to take action on the domestic front. They made specific suggestions/proposals regarding the wording of preliminary recommendations.

70. Some observers, in particular the observer for Germany, speaking on behalf of the European Union, stressed the need to use existing mechanisms to address issues relating to migrants better. They considered that existing mechanisms could be sensitized in order to give more attention to alleged violations of human rights of migrants and to develop a consistent approach. These mechanisms included treaty bodies, thematic rapporteurs (on racism, torture, etc.) and other bodies, such as the Working Group on Involuntary Disappearances and the Working Group on Arbitrary Detention. Furthermore, the observer for Germany underlined the European Union's view that the mandate of any new mechanism would need to be carefully formulated in order to avoid overlap with existing mechanisms. Other observers said that consideration should also be given to the fact that the Commission on Human Rights had embarked on a review of its mechanisms with the purpose of strengthening existing mechanisms and reducing the number of mechanisms, if necessary, to avoid duplication.

71. Other observers reacted by mentioning that although those mechanisms touched migrants' issues there was no coordination among them, they had their own respective heavy agendas and did not consider migrants as a priority. Furthermore, there were strong precedents for Commission mechanisms monitoring the same subject matter as treaty bodies. For example, the Special Rapporteur on Torture and the Committee against Torture; the Special Rapporteur on violence against women and the Committee on the Elimination of Discrimination against Women; the Special Rapporteur on racism and the Committee on the Elimination of Racial Discrimination; the Special Rapporteur on the sale of children and the Committee on the Rights of the Child.

72. During the final public meeting, the observer for the United States of America said that his Government had not signed the Migrant Workers Convention because it believed that existing human rights instruments afforded migrant workers all necessary human rights protection. The problem, as with many other situations, was lack of implementation, not the need for new standards. He underlined that the United States did not support the establishment of a special rapporteur of the Commission on Human Rights on the question of migrants. First, because such a mechanism would have a considerable overlap with other mandates and second, because of the lack of resources, including secretariat support, for existing mandates. Lastly, his Government believed it was imperative to await the outcome of the Commission's review of mechanisms before establishing new thematic mandates.

73. The observer for Spain commended the work done by the working group and said that its report would serve as a firm basis for negotiations at the fifty-fifth session of the Commission and assist it in deciding which follow-up mechanism to establish. Not all recommendations made by the working group would have the full support of his Government. However, in his opinion, the report rightly took into consideration the following six main areas of concern: the need to eliminate unjustifiable discrimination in the exercise of rights and in access to existing services; promoting living together based on democratic values and attitudes of tolerance; guaranteeing migrants a legally and socially stable situation; combating the barriers impeding integration; eradicating any signs of exploitation; and mobilizing society against racism and xenophobia.

74. The vast majority of speakers unreservedly supported the working group's recommendation to designate a special rapporteur for a renewable three-year period, with the functions and terms of reference contained in paragraphs 48 and 124.

75. The representative of the Steering Committee of the Global Campaign for the Ratification of the International Convention on Migrants' Rights, an alliance of intergovernmental and non-governmental organizations, supported the substantial results of the working group, in particular its recommendation concerning further efforts towards ratification of the 1990 Convention on migrants. The Steering Committee recognized the value of an ongoing mechanism within the United Nations human rights monitoring system.

VI. THE WORKING GROUP'S FINDINGS ON OBSTACLES TO THE EFFECTIVE AND FULL PROTECTION OF THE HUMAN RIGHTS OF MIGRANTS

76. The working group estimated the number of migrants worldwide currently to be about 130 million of whom, according to rough estimates, there could be as many as 30 million in an irregular situation in the various receiving States.

77. As subjects of human rights, migrants are vulnerable because they are denied recognition and power. They are vulnerable because they are considered as "outsiders" in the receiving societies. They are vulnerable because of the failure of the receiving States to apply international human rights standards either to regular or irregular migrants. Real empowerment of migrants has legal implications at the national and international levels, and short-term as well as long-term solutions should be sought. The need for this has become even more acute owing to increasing problems of xenophobia, prejudice and discrimination against migrants in receiving countries.

78. According to the five intergovernmental experts of the Working Group, the main institutional, social and economic obstacles to the full enjoyment of the human rights of migrants include those described in the following paragraphs.

A. Institutional obstacles

Absence or non-application of standards and norms in national law

79. A primary obstacle to full respect and enjoyment of the basic human rights of migrants is the absence, non-application or non-acceptance of the universal standards and norms in national law which explicitly recognize and extend to migrants basic human rights. Numerous countries have incorporated international human rights standards in their domestic legal systems, generally restricting their application to citizens or nationals. Even where they have been incorporated, universal human rights standards are not fully enjoyed by migrants, or are violated. Ignorance, non-awareness or disregard of relevant human rights norms by local authorities or individuals also negatively affect migrants. This phenomenon restricts the ability of the affected migrant community and potential supporters to advocate and act to defend their rights.

Absence of focused attention to the rights of migrants under different international instruments

80. The problem is also related to, and is often exacerbated by, the wide dispersal in different international instruments of the human rights provisions which are of special relevance to various migrant groups. The absence of a consolidated text of the various provisions tends to inhibit focused and systematic attention to migrants as a specific vulnerable social group, and makes the tasks of the relevant advocacy bodies more difficult.

Failure to ratify international human rights standards

81. Failure to achieve widespread ratification of the International Labour Organization (ILO) Convention concerning Migration for Employment (Revised), 1949 (No. 97), the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No. 143) and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families represents a very serious obstacle to the full enjoyment of the human rights of migrants. Only 41 States are party to ILO Convention No. 97, 18 to Convention No. 143, and 10 States have ratified the 1990 Convention on migrants.

Migrants' vulnerability due to organizational weakness

82. The protection of rights and the defence of the interests of various social groups in a modern State largely depend on the organizational strength that each group can mobilize and the pressure that it actually or potentially exercises for that purpose. Often devoid of any affiliation to any strong organization in the host country, migrants, not surprisingly, tend to remain at the margin of its power structure, which only adds to their vulnerability. In the absence of constant vigilance and any strong pressure on their behalf, the migrants' status remains insecure even in countries where their basic human rights are recognized in national laws. Despite the establishment of their own associations by migrant communities in a number of countries, often with the help of churches, trade unions and political parties, by and large the organizational base of the migrant population continues to be extremely weak. Even when autonomous associations of migrants are permitted, members of such organizations can be easily deported on the grounds that they are threatening "public order", and in the absence of any precise definition of public order, the potential threat could make their situation precarious and vulnerable.

Impunity and denial of justice

83. In countries where migrants are used as scapegoats for economic, social or public health calamities, there is often impunity for violators of the human rights of migrants. Related to this are negative attitudes on the part of those in power which inhibit the effective application of the basic rights of migrants, even when they are provided for in law. Such negative attitudes often lead to passive or hidden discrimination against migrants, and recourse to civil remedies is constrained by the difficulty of proving formal violation of rights and the financial cost involved in the legal procedures. Despite the principle of equality, which may be guaranteed by law, the migrants in such circumstances suffer from discrimination, especially with regard to access to opportunities, creating a vicious circle of feelings of inferiority and powerlessness which may affect even the second or third generation of migrants.

Abuses of human rights in connection with expulsions

84. While a sovereign State has the right to expel from its territory a foreigner whose entry or stay is illegal, human rights violations tend to occur in connection with identifying, finding and detaining such persons. In

recent years, there have been many cases in various countries of arbitrariness in connection with detention, and use of force in securing the expulsion of members of migrant groups. In a number of instances, inhuman or degrading treatment has been used, in violation of existing human rights norms. While non-compliance with existing human rights laws is clear in many such cases, there is also a problem of gaps in existing laws or a need to devise a more focused articulation of human rights provisions to cover specific situations relating to expulsion.

Inadequate training of law enforcement officials in the field of human rights

85. Inadequate training of law enforcement personnel on human rights issues and the weakness of the judicial institutions in upholding the basic rights of migrants are also among the major obstacles to full enjoyment by migrants of their basic human rights. These deficiencies are often related to lack of adequate financial resources for, or to the low priority attached to, the protection of migrants human rights.

B. Social obstacles

Social exclusion

86. In a number of countries, migrants often find themselves constrained to live in urban areas characterized by lack or inadequate provision of basic public services, or sub-standard facilities. Many of them have little or no access to public education, health care or employment, a situation often amounting to violation of their social and economic rights. The offspring of migrants can easily inherit this condition, especially when the parents face obstacles in integrating socially and economically into the host society.

Xenophobia and racism

87. Migrants are often victims of xenophobia and racism, behaviour commonly related to weak or insufficient democratic values and poor traditions of tolerance towards those considered "different" in a social context. Racial, ethnic, religious and other characteristics of migrants distinct from dominant characteristics of the host population often serve as the basis for discrimination. Popular and/or politically driven anti-foreigner sentiment based on racial, ethnic, national or religious characteristics is a strong obstacle both to recognition of and respect for the human rights of migrants. The failure of Governments and law enforcement personnel to take concrete measures to discourage and combat xenophobia and racism can also be considered an obstacle to respect for the human rights of potential or actual victims. Empowerment in the human rights context requires a clear recognition of inherent human rights and dignity. The absence of such recognition by the State and civil society often paves the way for infringement of migrants' human rights.

Prejudice, stereotypes and scapegoats

88. The increasing targeting of migrants in countries in all regions of the world as scapegoats for domestic, social and economic problems has direct and indirect consequences, including acceptance of, and impunity for, direct

attacks on their rights and integrity. The deliberate attribution to migrants of blame for major problems often overlaps with xenophobic and racial bias.

89. A significant segment of the mass media and public figures play an important role in the perpetuation of stereotyping and the use of migrants as scapegoats. These negative sentiments, called "social construction of an enemy" by sociologists, victimize migrants. Such victimization tends to manifest itself in direct hostility, violence or violations of the right to life and physical integrity.

C. Economic obstacles

90. Conditions of economic deprivation are a cause and an effect of the vulnerability of migrants in host societies. Economic factors accentuated by globalization represent significant obstacles to the realization of respect for their human rights.

Labour market discrimination

91. The xenophobia and racial discrimination to which migrants are subjected find their expression in discrimination in access to jobs and in employment. Disproportionally hit by unemployment because of discrimination, many migrants find themselves excluded from the labour market and thus from the main avenue towards economic self-sufficiency and integration into society at large.

92. When employed, migrants are often over-represented in bottom-rung jobs which in many instances are below their skill levels. Migrants in general and irregular migrants in particular are notably to be found in dirty, demanding and dangerous jobs shunned by nationals. The resulting segmentation of the labour market implies further obstacles to the full enjoyment of migrants' human rights. This is exacerbated by the rapid expansion of the informal sector of the economies of industrialized migrant-receiving countries and the growing demand for irregular migrant workers who, by definition, constitute an unprotected, docile and easily exploited workforce.

Conditions in specific economic sectors

93. Migrants tend to be concentrated in sectors of economic activity with no health and safety protection, and little or no legal protection, where they are particularly vulnerable to human rights abuses. These sectors are described below.

(a) Women and children migrants, especially when they are victims of prostitution and pornography

94. Prostitution and pornography involving women and children are growth industries and, in many respects, can be considered as contemporary forms of slavery; they are incompatible with human rights. Trafficking in women for prostitution and pornography is an increasing phenomenon.

(b) Domestic workers

95. The isolation of domestic workers, most of them women, who are as a rule excluded from national labour laws, is conducive to serious violations of

human rights. The conditions of domestic workers often can be comparable to slavery: unduly long working hours, poor remuneration, no access to social security, inadequate food and isolation because they are afraid of the authorities and often do not speak the local language. As with trafficking, they are lured by the empty promises of agencies that are well organized and operate worldwide.

(c) Farm and seasonal workers

96. The persons involved are generally among the lowest paid and work under particularly hazardous conditions which, in extreme cases of exploitation, are also comparable to slavery. Migrant farm workers are particularly vulnerable to human rights abuses because of short-term employment opportunities, low level of education, working conditions which typically isolate them from the public eye, and often protectionist labour legislation favouring agro-business.

(d) Migrants in the informal economy

97. Another important group of migrants who are exposed to serious human rights abuses are those engaged in the informal economy of the receiving countries, where small and less competitive enterprises, especially in textile, garment-making and various service industries, try to save on social and labour costs by hiring cheap and often irregular migrant workers, increasingly with the help of traffickers. Few of these small enterprises come within the purview of national legislation, and even in cases where they do, financial and administrative constraints prevent law enforcement agencies from ensuring that the relevant laws are followed. The legal and administrative vacuum in the system of protection is further aggravated by the absence of fully established trade unions capable of providing protection to migrant workers in the informal economy. The result is inhuman exploitation and large-scale abuse of the basic labour and human rights of these migrant groups. Even in countries where general human rights and social legislation is well advanced, the working and living conditions of these migrant workers are often comparable to those of the slave labour conditions prevailing at the end of the nineteenth century. A most disquieting aspect of the situation is the continuing expansion of the informal economy in many migrant-receiving countries owing, at least in part, to the increasing use of this sector by respectable firms through subcontracting arrangements.

The impact of globalization

98. The consequences of the globalization process have not been given sufficient attention. The gap between the pace of economic globalization, especially in the form of increased flows of trade and investment, on the one hand, and the development of norms and institutions to address new and emerging social issues, on the other, has had serious repercussions on the situation of migrants. Inadequate legal standards and relaxed enforcement of such standards as do exist in situations such as a dramatic increase of temporary jobs, in which many migrants are employed, has led to a weakening of the protection system, especially with regard to health, safety and working conditions.

99. While increased globalization, including closer inter-penetration of markets has generated new demands for certain types of migrant labour in many receiving States, the failure to recognize such labour needs through clearly formulated policies has fuelled the numbers of irregular migrants.

100. Special attention should also be given to the situation created by the recent increase in the number of Export Processing Zones (EPZs) in the context of rapid economic globalization, although they do not generally involve large-scale cross-border movements.

101. It should be recalled that jobs in EPZs are badly paid and the working conditions are very poor. Mention should be made of the social problems existing in EPZs: local landlords take advantage of the accommodation shortage to charge enormous rents for sub-standard accommodation; transport services and social infrastructure (especially child-care facilities) are often non-existent; friction between the EPZ workers and local residents is common and real integration of workers in local communities is difficult to achieve, in particular because of the high turnover in many Zones. Furthermore, in many EPZs, 90 per cent of the workforce is made up of young female workers who are often abused by unscrupulous employers, targeted by local men preying on Zone workers and ostracized when they go back to their villages.

VII. RECOMMENDATIONS

A. Recommendations concerning institutional and legal obstacles

102. All individuals, wherever they may live, are entitled to the full enjoyment of all the rights laid down in the Universal Declaration of Human Rights. It is incumbent on all States to respect the fundamental human rights of migrants, regardless of their status. This obligation, which is without prejudice to the sovereign right of every State to determine the conditions under which foreigners may have access to the national territory, extends to all migrants, including those in an irregular situation. It also entails a corresponding obligation for the host country to guarantee migrants, including those in an irregular situation, treatment which does not undermine their human dignity. To give effect to this obligation, the receiving State should include in its legislation provisions which facilitate and permit access for migrants to all public services addressing their vital needs.

103. It is imperative for the international community to have a specific and consistent body of regulations for the promotion and protection of the human rights of migrants, to be used as a reference for the different bodies of national legislation to achieve this objective. The dispersive and fragmentary nature of international human rights law currently in force should in no way prevent States from fulfilling this obligation, with a view to ensuring that equality is effectively achieved. To this end:

States should be urged to ratify the 1990 United Nations Convention as well as the ILO Conventions, in particular Nos. 97 and 143;

At the same time, a compendium of provisions applicable to migrants under the relevant instruments of international law should be prepared;

States, in particular those which have already included international human rights standards in national legislation, should be urged to extend these basic rights to migrants explicitly, through appropriate legal enactment, due account being taken of the special needs and conditions of the various types of migrants (recruitment, job and housing security, family reunion, education and social security).

104. Having regard to the fact that the family is the basic unit of society, States should be encouraged to include in their legislation family reunification as a basic right of migrants.

105. In order to enhance the integration of migrants, host countries should examine, in a spirit favourable to migrants, the conditions and modalities relating to the acquisition of nationality of the host countries.

106. Given that a significant number of States have not ratified the various instruments guaranteeing the human rights of migrants or are not effectively implementing them, it is important to make full use of the protection of current and future regional and bilateral cooperation arrangements, especially those relating to migratory movements. These initiatives should run parallel to, and not be regarded as a substitute for, efforts to secure increased ratification and effective implementation of the existing international treaties concerning human rights, including the 1990 Convention on migrants. The establishment of agreements regarding the readmission of illegal migrants may, in some circumstances, be advisable.

107. Governments of host countries should be urged to share any reports of alleged violations of the human rights of migrants with the migrants' consular representatives, and to ensure the right of all migrants to assistance from those consular representatives in accordance with the Vienna Convention on Consular Relations.

B. Recommendations concerning social obstacles

108. If human rights imply empowerment, it becomes incumbent on all States to protect the right of migrants to freedom of association as a means of overcoming their vulnerability.

109. States should be encouraged to facilitate the establishment of democratically constituted associations of migrants and the participation of migrants in trade unions as a means of safeguarding their legitimate rights and maintaining continuing dialogue with the political leaders and the governmental agencies concerned.

110. The host country should be actively involved in the promotion and dissemination of information about the contributions made by migrants to the economy and society of the host country, thereby helping to combat xenophobia by promoting cultural diversity.

111. All necessary steps must, therefore, be taken to encourage the mass media to disseminate information on migrants and their rights, in an objective and unbiased manner and from a gender perspective. It would be desirable to encourage special programmes for this purpose by providing appropriate support and assistance to the institutions concerned. Furthermore, public and private

institutions concerned with the mass media should be urged to involve representatives of the migrant community both in their policy-making process and in preparing information programmes.

112. It is recommended that training be provided to government policy-making and law enforcement personnel at all levels regarding the existence, applicability, implementation and enforcement of human rights standards, as exemplified by the joint initiatives recently taken by several international organizations. Training courses concerning migrants specifically for advocates and counsellors within migrant communities are also recommended to promote self-help.

113. It is recommended that the United Nations designate a day as the International Day of the Migrant in order to highlight and promote the human rights of migrants: 18 December could be chosen, taking into account that the 1990 Convention on migrants was adopted by the General Assembly on 18 December 1990.

114. It is recommended that a specific item on migrants as victims of racism and discrimination be included in the agenda of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

C. Recommendations concerning economic obstacles

115. Since the informal economy which harbours a significant proportion of irregular migrants operates largely at the periphery or outside the national protection system, States should be encouraged to extend the basic human rights standards to this sector and to enforce them, and to assist enterprises to improve their economic capacity, thereby enabling them to meet these standards.

116. The globalization of the world economy is tending to expand the flow of migration, including migrants in an irregular situation. This phenomenon necessitates a more realistic assessment of the labour market needs of the countries concerned. If an economy faces a real scarcity of labour or of specific skills, it is advisable that these shortages be met through legal immigration or by adopting alternative policies capable of restoring equilibrium in the labour market.

117. Punitive measures should be taken against employers of irregular migrants and those who profit from the use of forced labour and slavery-like practices.

118. In view of the increasing scale of trafficking in human beings and related human rights abuses, as well as the low level of accession and ratification of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and the 1990 Convention on migrants, it is recommended that international standards relating to combating trafficking and the punishment of its perpetrators be reformulated and that minimum standards for the treatment of victims of trafficking in human beings, forced labour and slavery-like practices be elaborated. Such an instrument or instruments should address all aspects of trafficking and trafficking-related activities, contain clear and up-to-date definitions and provide for the establishment of a mechanism to ensure

effective implementation. Special attention should be accorded to the plight of women and children as the most vulnerable categories of migrants.

119. Within this context, the work on drafting an international legal instrument against trafficking and the illegal transport of migrants currently being carried out by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime deserves support. Every effort should be made to ensure humane conditions of repatriation for women and children who have been trafficked and who have been arrested by the authorities in the receiving or transit countries.

120. A distinction should be made between trafficking and irregular migration, given that trafficking is criminal behaviour which often victimizes irregular migrants and places them in slavery-like situations.

121. States should be urged to adopt legislation aimed at identifying and prosecuting traffickers, their accomplices and direct exploiters of illicit and forced labour. This task seems to be especially pressing for the sending countries, where recruiters are often operating virtually unimpeded.

122. Sending, transit and receiving countries should cooperate closely in tackling the problems of trafficking and they must assume their respective obligations in this connection.

D. Recommendation concerning a monitoring mechanism at the international level

123. Following an in-depth analysis of the obstacles to the enjoyment of the human rights of migrants, the working group strongly felt the need for the creation of an international mechanism to deal with human rights issues affecting different groups of migrants. In reaching this conclusion, the working group was guided by several important considerations, including the following:

Although existing human rights instruments contain a significant number of provisions of relevance to migrants, some serious deficiencies remain, owing to the lack of a consistent and focused approach to a vulnerable group which now comprises some 130 million people and presents issues that hold the potential of seriously affecting inter-State relations in the years to come.

While the 1990 Convention on migrants is notable for its focused attention to migrant workers and their families, several important migrant groups, including certain categories of migrant workers, remain outside its scope. Furthermore, all the indications are that there will be additional delay before the Convention, and thus its monitoring mechanism, becomes operational.

More careful attention is needed also in addressing the increasing number of gross violations of the human rights of migrants in different parts of the world.

124. This mechanism should be the appointment of a special rapporteur for a three-year period with the functions described in paragraph 48 of the present report and the terms of reference listed below:

To request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their families;

To formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants;

To promote the development and effective application of international legal instruments on the issue;

To recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants.

Annex

PRELIMINARY OBSERVATIONS

HUMAN RIGHTS FRAMEWORK	OBSTACLES IN ACCORDANCE WITH THE FOLLOWING CRITERIA:			RECOMMENDATIONS FOR REMEDYING VIOLATIONS AGAINST MIGRANTS
	MIGRANTS' BASIC CONDITION A	WORLDWIDE PHENOMENA B	NATIONAL VARIATIONS C	D
UNIVERSAL DECLARATION OF HUMAN RIGHTS		Analysis of the information received confirms that there is an awareness of increasing migration and of increasing violations of basic human rights and a lack of remedial action.	National situations are not static ones. Need to strengthen the protection of human rights of nationals within and outside their territory.	Need for monitoring mechanisms at the international level, in particular because the 1990 Convention has not yet entered into force and it will be years before it is universally applicable. Need to develop bilateral and regional agreements, in particular regarding recruitment of workers, security of employment and residence, housing or accommodation, family reunification, education and social security, and readmission of "ex-irregular" migrants.
Articles 1 and 2		Restrictive anti-migration laws aggravate the flow of illegal migrants. Support of status quo by interest groups in sending and receiving countries.		The basic human rights of migrants have to be respected, even when migrants are irregular, without prejudice to the sovereignty of States, in particular, the sovereign right to decide who should or should not enter their territories.

HUMAN RIGHTS FRAMEWORK	OBSTACLES IN ACCORDANCE WITH THE FOLLOWING CRITERIA:			RECOMMENDATIONS FOR REMEDYING VIOLATIONS AGAINST MIGRANTS
	MIGRANTS' BASIC CONDITION A	WORLDWIDE PHENOMENA B	NATIONAL VARIATIONS C	D
	The level of vulnerability is affected by such factors as gender, age and whether or not the migrant is regular or irregular. The fact of being irregular renders the migrant more vulnerable.			
Articles 3 and 5	Victims of criminal exploitation in their countries of origin (usually when they have taken the decision to emigrate or when they are lured into leaving the country), in transit countries or in countries of reception.			Action has to be taken in order to bring to justice alleged perpetrators of violations of the human rights of migrants, in order to put an end to impunity and the abuse of power.
Articles 6 and 8	Unstable and precarious legal and administrative conditions.		Deficiencies in social security systems. Lack of sufficient legislative and administrative protection.	Administrative processes for regularization of illegal immigrants when possible. Legal and administrative measures to ensure stable and legal residence, provision of documents (birth certificates, social security cards, etc.) to avoid marginalization.

HUMAN RIGHTS FRAMEWORK	OBSTACLES IN ACCORDANCE WITH THE FOLLOWING CRITERIA:			RECOMMENDATIONS FOR REMEDYING VIOLATIONS AGAINST MIGRANTS
	MIGRANTS' BASIC CONDITION A	WORLDWIDE PHENOMENA B	NATIONAL VARIATIONS C	D
Article 7	Victims of racism and xenophobia.		Insufficient democratic values and tolerance. Lack of sufficient steps to achieve integration.	Political parties and the civil society are responsible for safeguarding and promoting human rights values. The role of information and media outlets should be explored, particularly highlighting the economic and social enrichment that migrants bring. Establishment of an International Day of the Migrant.
Article 15			Denial of host country citizenship. Denial of dual citizenship, creating social and legal problems for migrants and their families.	
Article 16			Denial of family unification for the offspring of migrants who are no longer minors. Marital status should not affect the residency rights of women divorced on the grounds of violence.	
Article 21			Denial of possibility of participating in local and municipal elections.	

HUMAN RIGHTS FRAMEWORK	OBSTACLES IN ACCORDANCE WITH THE FOLLOWING CRITERIA:			RECOMMENDATIONS FOR REMEDYING VIOLATIONS AGAINST MIGRANTS
	MIGRANTS' BASIC CONDITION A	WORLDWIDE PHENOMENA B	NATIONAL VARIATIONS C	D
Articles 23, 25 and 26	Conditions of economic deprivation.	The globalization of the world economy is tending to expand the flow of migration; some sectors of the economy are profiting from the labour of migrants in irregular situations.		
	Social exclusion and/or marginalization.	Imbalance between opportunities for work and the number of workers.	Unsuitable working conditions. Denial of equal pay for equal work.	Need to adopt measures in order to achieve equality, in law and in practice. Find ways to guarantee the principle of equal opportunities, including facilitating judicial remedies.
	Linguistic and other types of barriers.		Unjustified discrimination, in particular in areas such as education and health.	
CAT, CERD, CCPR, CESCR, CEDAW		Failure to enforce existing international human rights instruments in favour of migrants.	Different degrees of compliance with international instruments that have been ratified, in particular, articles relevant to migrant issues.	Need to request treaty bodies to focus more systematically on migrant issues. Need to find ways to complement the treaty bodies' work.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/81
22 December 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 15 of the provisional agenda

INDIGENOUS ISSUES

Implementation of the programme of activities for the International Decade of the World's Indigenous People

Report of the High Commissioner for Human Rights

I. Introduction

1. Following a recommendation by the World Conference on Human Rights, the General Assembly, in its resolution 48/163 of 21 December 1993, proclaimed the International Decade of the World's Indigenous People (1995-2004). The goal of the Decade is to strengthen international cooperation for the solution of problems faced by indigenous people in such areas as human rights, culture, the environment, development, education and health. The theme of the Decade is "indigenous people: partnership in action".

2. In its resolution 50/157, the General Assembly adopted the programme of activities for the Decade. One of the main objectives of the Decade is the adoption of the draft United Nations declaration on the rights of indigenous peoples and the further development of international standards as well as national legislation for the protection and promotion of the human rights of indigenous people. Another major objective of the Decade is to further the implementation of the recommendations pertaining to indigenous people of all high-level international conferences, including the World Conference on Human Rights, in particular its recommendation that consideration be given to the establishment of a permanent forum for indigenous people in the United Nations system.

3. Also in resolution 50/157, the Assembly recommended that the objectives of the Decade should be assessed by quantifiable outcomes that will improve the lives of indigenous people and that can be evaluated halfway through the Decade (1999) and at its end (2004).

4. In its resolution 52/108, the General Assembly decided to appoint the High Commissioner for Human Rights as Coordinator for the Decade. The High Commissioner was requested to submit, through the Secretary-General, an annual report to the General Assembly on the implementation of the programme of activities for the Decade.

5. In its resolution 1998/13, the Commission on Human Rights requested the High Commissioner, in her capacity as Coordinator for the Decade, to submit an updated annual report reviewing activities within the United Nations system under the programme of activities for the Decade to the Commission on Human Rights at its fifty-fifth session under the agenda item entitled "Indigenous issues".

6. The High Commissioner, through the Secretary-General, submitted the annual report on the implementation of the programme of activities to the General Assembly at its fifty-third session. The report, contained in document A/53/310, is available to the Commission on Human Rights at its fifty-fifth session.

7. The present report is an addendum to the report to the General Assembly, contained in document A/53/310.

Indigenous Fellowship Programme

8. The 1998 Indigenous Fellowship Programme was implemented by the Office of the High Commissioner for Human Rights in accordance with the adopted general programme outline and the specified thematic programme. The Programme lasted from 1 June to 30 November 1998. Four candidates were awarded a certificate for satisfactory completion of the Programme.

9. The Government of the Netherlands has earmarked a JPO (Junior Professional Officer) post for the Fellowship Programme. The appointed person will take up her position as a full-time fellowship coordinator as of 11 January 1999.

Voluntary Fund for the International Decade of the World's Indigenous People

10. The Voluntary Fund was established pursuant to the General Assembly resolutions on the International Decade. In accordance with paragraph 23 of the annex to resolution 50/157 on the programme of activities for the Decade, the Coordinator of the Decade established an Advisory Group in April 1996, with the participation of eminent indigenous persons as well as the Chairperson-Rapporteur of the Working Group on Indigenous Populations. The Advisory Group is invited to make recommendations relating to the Voluntary Fund to the High Commissioner for Human Rights/Coordinator of the Decade for approval on behalf of the Secretary-General.

11. At its third session, held from 2 to 8 April 1998, the Advisory Group requested the Secretariat to organize a three-day meeting for its members who might be present in Geneva during the session of the working group on the draft United Nations declaration on the rights of indigenous peoples, to evaluate the 1998 Indigenous Fellowship Programme and to select candidates for the 1999 Programme. The inter-sessional meeting of the Advisory Group was

held at the United Nations Office at Geneva from 1 to 3 December 1998. Four of its members attended: Ms. Erica-Irene Daes (Chairperson-Rapporteur of the Working Group on Indigenous Populations), Mr. Michael Dodson (Chairperson of the Advisory Group), Ms. Tove Sövndahl Petersen and Ms. Victoria Tauli-Corpuz.

12. The Advisory Group evaluated the 1998 Indigenous Fellowship Programme and examined 123 applications from indigenous communities and organizations from 39 countries for the 1999 Programme.

13. After considering all the candidates, the members of the Advisory Group recommended that the following candidates, in order of preference, be offered grants to participate in the OHCHR Indigenous Fellowship Programme in 1999:

Candidate	Alternate
Ms. Megan Davis (Australia)	Mr. Songphon Rattanawilailak (Thailand)
Mr. Ferry Marisan (West Papua-Indonesia)	Ms. Jacqueline Mai Katona (Australia)
Mr. Robbeck Vasilievich (Russian Federation)	Mr. José Cristián León Molina (Colombia)
Ms. Kristina Nordling (Sweden)	Mr. Denes Kiba (Suriname)

14. An additional group of alternates was recommended without any order of preference: Mr. Yosia Maday (West Papua-Indonesia), Mr. James Kid Rodelo (Guyana), Mr. Benon Mugarura (Rwanda) and Mr. Néstor Segura (Argentina).

15. These recommendations were approved by the High Commissioner for Human Rights/Coordinator of the Decade on behalf of the Secretary-General on 4 December 1998.

16. As of 15 September 1998 (deadline for the receipt of applications), the Secretariat had not received applications from externally funded candidates to join the OHCHR Indigenous Fellowship Programme. However, some indigenous organizations, communities, institutions and Governments have informed the members of the Advisory Group and Secretariat that they are trying to fund their candidates. It is therefore expected that one or two indigenous organization(s) will offer self-funded candidates for the Fellowship Programme for consideration by the Advisory Group at its fourth annual session in April 1999.

17. The following contributions received from Governments are available for allocation by the Advisory Group at its fourth session in April 1999. 1/ (as at 10 December 1998):

1/ According to information available at OHCHR.

State	Amount (US$)	Paid in NY/GE	Paid on
Cyprus	1 000	GE	12 May 1998
Estonia	1 000	GE	21 September 1998
Greece	3 000	GE	14 April 1998
New Zealand	13 232	GE	9 November 1998

18. The following contributions received from non-governmental organizations are available for allocation by the Advisory Group at its fourth session in April 1999. 1/ (as at 10 December 1998):

NGOs and individuals	Amount (US$)	Paid in NY/GE	Paid on
Aboriginal and Torres Strait Islander Commission	5 839	GE	26 June 1998
Intuition	50	GE	1 May 1998
Music, Inc.	150	GE	7 August 1998
DBA Sequoia	50	GE	21 August 1998
Records	50	GE	6 October 1998

19. The following pledges were outstanding as at 10 December 1998:

State	Amount (US$)	Pledged in NY/GE	Pledged on
Bolivia	1 000.00	NY	4-5 November 1998
Denmark	153 000.00	GE	November 1998
Greece	3 000.00	NY	4-5 November 1998
Japan	37 000.00	NY	4-5 November 1998
Tunisia	951.47	NY	4-5 November 1998
Total	194 951.47		

20. The amount of contributions received as at 10 December 1998 (about US$ 30,000) is insufficient to carry out the activities planned for 1999, which include the Indigenous Fellowship Programme, grants to projects for indigenous communities and organizations and the organization of seminars and workshops, representing a total amount of about US$ 540,000.

21. The Chairman of the fifty-fourth session of the Commission on Human Rights addressed a strong appeal to the participants at the Commission to contribute to the Fund. The Commission, in its resolution 1998/13, encouraged all Governments to support the Decade by contributing to the Fund. The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

in its resolution 1998/22, also urged all Governments and intergovernmental and non-governmental organizations to contribute to the Fund and invited indigenous organizations to do likewise.

United Nations Voluntary Fund for Indigenous Populations

22. The United Nations Voluntary Fund for Indigenous Populations, established by the General Assembly in resolution 40/131 of 13 December 1985, provides financial assistance to representatives of indigenous communities and organizations to enable them to participate in the deliberations of the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, funded by means of voluntary contributions from Governments, non-governmental organizations and other private or public entities. The General Assembly extended the mandate of the Fund by resolution 50/156 of 21 December 1995 by deciding that the Fund should also be used to assist representatives of indigenous communities and organizations to participate in the deliberations of the open-ended inter-sessional working group of the Commission on Human Rights on the draft declaration on the rights of indigenous peoples.

23. The Fund is administered in accordance with the Financial Regulations and Rules of the United Nations by the Secretary-General assisted by a Board of Trustees. The mandate of the Board is to advise the Secretary-General on the administration of the Fund, through the Office of the High Commissioner for Human Rights.

24. All the relevant information on the recommendations adopted at the eleventh session of the Board of Trustees and approved by the High Commissioner for Human Rights on behalf of the Secretary-General were included in the biennial report of the Secretary-General to the General Assembly on the Status of the Voluntary Fund (A/53/282) and in the report of the Secretary-General on the Implementation of the programme of activities for the Decade (A/53/310). The information included in the present report intends to supplement and update the information provided in the reports to the General Assembly.

25. Owing to the few applications received to participate in the working group of the Commission on Human Rights, the Board of Trustees at its eleventh session in April 1998 recommended that the secretariat of the Fund and Board sent application forms to all organizations authorized by the Committee on Non-Governmental Organizations to participate in the working group on the draft declaration on the rights of indigenous peoples, encouraging them to apply for funding from the Fund.

26. The secretariat received and analysed 55 applications which were received within the deadline from indigenous communities and organizations authorized to participate in the working group.

27. After having examined the application forms during inter-sessional consultations, the Board recommended that grants in an amount of approximately US$ 50,000 be awarded to the following 12 representatives of indigenous communities and organizations to attend the fourth session of the working group:

State	Peoples represented	Organization	Name of representative	Estimated cost (US$)
Australia	Australian Aboriginal and Torres Strait Islander Peoples	Aboriginal Legal Service of Western Australia	Mr. Dennis Eggington	4 628
Bolivia	28 communities in the region of Lomerio (the application does not specify the name)	Central Indigena de Comunidades Originarias de Lomerio	Ms. Ana Garcia Chore	4 986
Brazil	Tenena and Guarani	Associação das Mulheres Indigenas do Centro Oeste Paulista	Ms. Jupira Manoel Sobrinho	3 628
Chile	Mapuche	Consejo de Todas las Tierras	Mr. Aucan Huilcaman	4 148
Kenya	Maasai	MAA Development Association	Mr. Samson Ole Mootian	2 758
Nepal	Rai-Kirati, Limbu, Chepang, Tamang, Gurung and Magar	Nepal Indigenous Peoples Development and Information Centre	Mr. Narad Mani Rai Kirati	3 728
Peru	Populations of Aréquipa, Puño, Cusco, Apurimac, Madre de Dios, etc.	Comisión Juridica de los Pueblos de Integración Tahuantinsuyana	Mr. Fortunato Turpo Choquehuanca	5 842
Philippines	Igorot people of Cordillera	Cordillera Peoples Alliance	Ms. Minnie Degawan	3 228
Russian Federation	Shoria people	Association of Shoria People	Mr. Michael Todishev	2 642
Ukraine	Crimean Tatars, Karais, Krymchaks	Mejlis of the Crimean Tatar People	Mr. Nadir Bekirov	2 642
United Republic of Tanzania	Hadzabe, Barbaig and Iraqw	Christian Spiritual Youth Ministry	Mr. Nicodemus Soko Siayi	4 638
United States of America	Lakota (Sioux)	Teton Sioux Nation Treaty Council	Ms. Ellen Wright	3 628

28. The following contributions received from Governments and non-governmental organizations were available as at 10 December 1998 1/ for allocation for the twelfth session of the Board of Trustees in April 1999:

State	Amount (US$)	Pledge in NY/GE	Paid on
Canada	10 110	GE	1 May 1998
Cyprus	1 000	GE	12 May 1998
Estonia	3 000	GE	21 September 1998
Finland	38 480	GE	3 June 1998
Greece	6 300 6 000	NY	14 April 1998 28 April 1998
Netherlands	36 968	GE	10 June 1998
Sweden	63 291	GE	25 September 1998
NGOs			
Aboriginal and Torres Strait Islander Commission	11 678 (A$ 20 000)	GE	26 June 1998
Grand total:	US$ 165 149		

29. The following pledges were outstanding as at 10 December 1998:

State	Amount (US$)	Pledged in NY/GE	Pledged on
Denmark	40 000	NY	November 1998
Japan	14 500	NY	4-5 November 1998
Total	54 500		

Draft United Nations declaration on the rights of indigenous people

30. The fourth session of the working group of the Commission on Human Rights on the draft declaration on the rights of indigenous people was held in Geneva from 30 November to 11 December 1998. The working group will submit its report to the Commission at its fifty-fifth session (E/CN.4/1998/82).

Open-ended ad hoc inter-sessional working group of the Commission on Human Rights on the establishment of a permanent forum for indigenous people within the United Nations system

31. In its resolution 1998/20, the Commission on Human Rights decided to establish an open-ended inter-sessional ad hoc working group, from within

existing overall resources, to elaborate and consider further proposals for the possible establishment of a permanent forum for indigenous people within the United Nations system. It also decided that the participation in the working group would be according to the same procedures as agreed on for the working group on the draft declaration.

32. The working group will meet from 15 to 19 February 1999 at the United Nations Office at Geneva. It will submit a report to the fifty-fifth session of the Commission.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/82
20 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 15 of the provisional agenda

INDIGENOUS ISSUES

Report of the working group established in accordance with Commission on Human Rights resolution 1995/32

Chairperson-Rapporteur: Mr. José Urrutia (Peru)

Introduction

1. By resolution 1995/32 of 3 March 1995 the Commission on Human Rights decided to establish an open-ended inter-sessional working group of the Commission on Human Rights with the sole purpose of elaborating a draft declaration, considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities entitled "Draft United Nations declaration on the rights of indigenous peoples" for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People. This decision was endorsed by the Economic and Social Council in its resolution 1995/32 of 25 July 1995.

2. The working group held 6 formal meetings and 14 informal plenary meetings during the period 30 November-11 December 1998. A total of 372 people attended the meetings of the working group, including 47 Governments, 47 indigenous organizations and 19 non-governmental organizations.

3. This report contains a record of the general debate. The debate which took place in the informal plenary meetings is not reflected in this report.

4. This report is solely a record of the general debate and does not imply acceptance of the usage of either the expression "indigenous peoples" or "indigenous people". In this report both terms are used without prejudice to the positions of particular delegations, where divergences of approach remain.

5. The working group was opened by a representative of the Office of the United Nations High Commissioner for Human Rights.

6. At its first meeting, the working group unanimously re-elected Mr. José Urrutia (Peru) as its Chairperson-Rapporteur.

Documentation

7. The working group had before it the following documents:

Provisional agenda (E/CN.4/1998/WG.15/1);

Draft report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 (E/CN.4/1998/WG.15/CRP.1-3);

Provisional list of participants (E/CN.4/1998/WG.15/Misc.1);

List of attendance (E/CN.4/1998/WG.15/INF.1).

8. The following background documents were made available to the working group:

Technical review of the United Nations draft declaration on the rights of indigenous peoples: note by the Secretariat (E/CN.4/Sub.2/1994/2);

Draft United Nations declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1994/2/Add.1);

Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1994/45;

Commission on Human Rights resolution 1995/32 on the establishment of a working group of the Commission on Human Rights to elaborate a draft declaration;

Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its first, second and third sessions (E/CN.4/1996/84; E/CN.4/1997/102; E/CN.4/1998/106 and Corr.1).

Participation in the session

9. The following States members of the Commission on Human Rights were represented: Argentina, Bangladesh, Brazil, Canada, Chile, China, Cuba, Denmark, Ecuador, El Salvador, France, Germany, Guatemala, India, Indonesia, Japan, Malaysia, Mexico, Pakistan, Peru, Philippines, Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela.

10. The following States Members of the United Nations were represented by observers: Algeria, Angola, Australia, Belgium, Bolivia, Colombia,

Costa Rica, Estonia, Finland, Iran (Islamic Republic of), Netherlands, New Zealand, Norway, Paraguay, Portugal, Spain, Sweden and Syrian Arab Republic.

11. The following non-member States were represented by observers: Holy See and Switzerland.

12. The following United Nations bodies and specialized agencies were represented by observers: United Nations Working Group on Indigenous Populations, International Labour Organization, World Intellectual Property Organization and World Trade Organization.

13. The following indigenous and non-governmental organizations in consultative status with the Economic and Social Council were represented by observers (general consultative status, special consultative status and roster):

Indigenous organizations: Aboriginal and Torres Strait Islanders Commission (ATSIC), Grand Council of the Crees (EEYOU ISTCHEE), Indian Council of South America, Indian Law Resource Center, Indian Movement "Tupaj Amaru", Indigenous World Association, Innu Council of Nitassinan, International Indian Treaty Council, International Organization of Indigenous Resource Development, Inuit Circumpolar Conference, National Aboriginal and Islanders Legal Services Secretariat (NAILSS) and Saami Council.

Non-governmental organizations: American Association of Jurists, Asian Buddhist Conference for Peace, Asian Cultural Forum for Development, Centre Europe - Tiers Monde (CETIM), Fian - Foodfirst Information and Action Network, Friends World Committee for Consultation (Quakers), Habitat International Coalition, International Centre for Human Rights and Democratic Development, International Human Rights Association of American Minorities, International Movement Against All Forms of Discrimination and Racism, International Service for Human Rights, International Work Group for Indigenous Affairs, Minority Rights Group, North-South XXI, International Organization for the Development of Freedom of Education, Society for Threatened Peoples and Worldview International Foundation.

14. The following organizations of indigenous people accredited in accordance with Commission on Human Rights resolution 1995/32 were represented by observers: Aboriginal Legal Service of Western Australia (INC), Ainu Association of Hokkaido, Ainu Association of Sapporo, American Indian Law Alliance, Asamblea Nacional Indígena Plural para la Autonomía, Asociacion Napguana, Assembly of First Nations, Associaçao das Mulheres Indigenas do Centro Oeste Paulista, Association nouvelle pour la culture et des arts populaires, Association of the Shor People, Catawba Indian Nation, Central Land Council, Christian Spiritual Youth Ministry, Comisión Internacional de Derechos de los Pueblos Originarios Andinos, Consejo de Todas Las Tierras Mapuche, Cordillera Peoples Alliance, Educational and Cultural Organization to Advance Restoration and Transition (ECOART), Fédération des Organisations amérindiennes de Guyana, Finno-Ugric Consultation Committee, Foundation for Aboriginal and Islander Research Action (FAIRA), Ikce Wicasa ta Omniciye, Indian Confederation of Indigenous and Tribal Peoples, Indigenous Woman

Aboriginal Corporation, International Alliance of Indigenous Tribal Peoples of the Tropical Forests, L'aAuravetl'An Foundation/Chukchi Council of Elders, Louis Bull Cree Nation, Lumad Mindanaw Peoples Federation, MAA Development Association, Mejlis of the Crimean Tatar People, Métis National Council, Montana Cree Nation, Navajo Nation, Nepal Indigenous Peoples Development and Information Service.

I. ORGANIZATION OF WORK

15. In his opening statement, at the first meeting, the Chairperson-Rapporteur said that the main purpose of the session was to continue moving forward. He expressed the hope that the working group would make every effort in order to achieve agreement on specific points and be able to present tangible results to the fifty-fifth session of the Commission on Human Rights. He also said that it was necessary to continue the dialogue and consultations between Governments and indigenous representatives.

16. At the first meeting the provisional agenda (E/CN.4/1998/WG.15/1) was adopted.

17. The Chairperson-Rapporteur proposed that the session begin with a general debate in a formal plenary meeting, in order to give the opportunity to make general comments to those delegations which were participating for the first time in the session and to those delegations which might wish to add further comments on the draft declaration. Otherwise, formal plenary sessions should be limited to the adoption of articles agreed upon by consensus in informal plenary meetings. He proposed then that the working group continue with an exchange of views on the principles underlying articles 1, 2, 12, 13, 14, 44 and 45 with a view to determining if there was a consensus thereon so that their adoption could be considered at a later stage. This exchange of views would be followed by a general debate on the fundamental principles contained in the draft declaration, such as the right of self-determination and its scope. Finally, he proposed that the working group consider articles 15, 16, 17 and 18 on which there had already been a wide consensus at the third session, with a view to reaching final agreement. With regard to speaking time, the Chairperson-Rapporteur proposed that participants would be allowed five minutes each, and called upon the participants to make good use of their speaking time to discuss specific articles.

18. The proposals for the organization of work were approved by the working group.

II. GENERAL DEBATE

19. Indigenous observer delegations stated that they regarded the draft declaration as being minimum standards for the promotion and protection of the fundamental rights and freedoms of indigenous peoples, and called upon the working group to recommend the immediate adoption of the draft declaration in its present form. They affirmed that the right of self-determination, as contained in article 3, was the fundamental underlying principle of the draft declaration. Concern was raised by a number of indigenous delegations that some Governments wanted to portray parts of the draft declaration as controversial.

20. The observer for the Indian Movement "Tupaj Amaru" stated that, while considering the draft declaration, special attention should be given to such notions as the recognition of the right of indigenous peoples to define themselves as peoples, the principle of self-determination, the exercise of collective ancestral ownership of land, the sovereignty over natural resources, the legal protection of cultural and intellectual property.

21. The observer for the Navajo Nation stated that the fundamental principle underlying the draft declaration was the right of self-determination of all peoples, including indigenous peoples. He said that many Governments objected to the recognition of the right of self-determination due to fear that it would imply a right to secession from existing States. Moreover, he stated that this fear was misguided and that the exercise of the right of self-determination did not threaten the security of States. He urged Governments to consider the right of self-determination as providing the legal means to protect and promote the human rights of all peoples.

22. The observer for the Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos - CAPAJ, referred to a meeting held in April 1998 by indigenous organizations in the Andean region to discuss the draft declaration. The meeting was of the view that the draft declaration was compatible with the domestic legislation of many countries of the region. He expressed the hope that the draft declaration would soon become a reality.

23. The observer for the Aboriginal and Torres Strait Islanders Commission said that during the discussion participants should take into account three principles, namely the principles of equality, non-discrimination and absolute prohibition of racial discrimination. He expressed readiness to engage in open dialogue in line with these principles.

24. The observer for the Indigenous World Association reiterated the need to put emphasis on the right of self-determination and noted that indigenous peoples should enjoy all basic human rights, such as the rights to be free, to be able to determine their own culture, their own religion, their own citizenship and their own form of government. These rights constituted the inalienable right of indigenous peoples to be themselves.

25. The observer for the International Work Group on Indigenous Affairs underlined the importance of collective rights contained in the draft declaration and stated that existing international human rights instruments did not adequately address the needs and rights of indigenous peoples; therefore, it was necessary to adopt the draft declaration as soon as possible. He urged Governments to demonstrate the political will necessary for the adoption of the draft declaration in its current form.

26. The observer for the Asian Cultural Forum on Development said that if Governments wanted the draft declaration to keep its universal character they should not insist on a definition of the term "indigenous peoples".

27. The observer for the Ainu Association of Sapporo stated that last year only two articles had been adopted and expressed concern that at such a speed it would take decades to adopt the whole text.

28. The observer for the Indian Law Resource Center expressed concern at the position of the delegation of the United States of America on the right of self-determination and stated that such a rejection of the indigenous peoples' right of self-determination was based on a narrow-minded interpretation of the concept. The observer for the Navajo Nation expressed similar views and concerns with respect to the position of the United States of America.

29. The observer for the Inuit Circumpolar Conference reiterated support for the draft declaration in its current form which, if adopted, would guarantee the political, social, economic and cultural rights of indigenous peoples and lead to a path of peace based on mutual respect. He also highlighted the importance of the right of self-determination.

30. The observer for the Saami Council stated that the draft declaration guaranteed the basic rights and fundamental political and legal rights of indigenous peoples and that it constituted a major breakthrough principally because it underlined the principle of equality for indigenous peoples; this had usually been denied on the grounds of discrimination. He further stated that although the right of self-determination of indigenous peoples could be exercised through various mechanisms and arrangements within the framework of the State concerned, it could not be qualified.

31. The observer for the International Centre for Human Rights and Democratic Development referred to article 3 on the right of self-determination and to the unnecessary fear of Governments that a recognition of this right would lead to secession.

32. The observer for the International Indian Treaty Council expressed concern over the statement made by the representative of the United States of America concerning, the term "indigenous peoples". She defined this as an attempt to redefine the scope of the draft declaration which, she said, was unacceptable.

33. The observer for the Grand Council of the Crees stated that he shared the views expressed by the observer for the International Indian Treaty Council. He welcomed the statement made by the representative of Denmark which recognized that human rights were universal and must be guaranteed to everyone without discrimination and be observed by all countries. He further stressed that the draft declaration did not mean to threaten the sovereignty, wealth or territorial integrity of States.

34. The observer for the Asamblea Nacional Indígena Plural para la Autonomía expressed concern at attempts by some Governments to delay the adoption of the draft declaration. It was also stated that a recognition of the right of self-determination for indigenous peoples would not affect the sovereignty of States.

35. The observer for the Association of the Shor People drew the attention of the working group to the fact that the living conditions of indigenous peoples in the Russian Federation had worsened and that many of them were about to become extinct because they did not have legal protection for their

rights. In this regard, he considered adoption of the draft declaration without changes a matter of urgency, as the document contained the minimum standards for the protection of the rights of indigenous peoples.

36. The Lumad Mindanaw Peoples Federation called for the adoption of the draft declaration without changes.

37. The observer for the Indian Law Resource Center stressed the importance of the dynamics and principles underlying the draft declaration and said that it would be counterproductive to consider each article without taking into account the proper context. She also highlighted the interactive nature of the underlying principles and rights stipulated in the draft declaration.

38. The observer for the Nepal Indigenous Peoples Development and Information Service drew the attention of the working group to the importance of the recognition of the existence of indigenous peoples and their right to self-determination.

39. The observer for the International Organization of Indigenous Resource Development welcomed the visit of the United Nations High Commissioner for Human Rights to his community in Canada during the previous week. Indigenous leaders from the four Cree Nations of Hobbema had discussed the draft declaration as well as other international issues with the High Commissioner.

40. The representative of the United States of America stated that her delegation considered several issues to be fundamental when negotiating the adoption of the draft declaration: (a) process - the new declaration should build upon and be consistent with the principles established in basic human rights instruments, such as the Universal Declaration of Human Rights, the International Covenants and the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. She was of the view that it should not be necessary to convert aspirations or objectives into "rights" in order to draw attention to them; (b) universality - the working group should address the scope of application of the draft declaration. She stated that although the draft declaration referred consistently to the term "indigenous peoples", it did not define it, and that it would seem important to have a universally accepted definition of the term "indigenous" so that the declaration would give rise to identifiable and practicable rights and obligations; (c) local realities - a number of formulations in the draft declaration would discourage, not encourage, support of key States, notably those with significant indigenous populations. She believed that in the context of universality it was important to take local realities into account when applying the draft declaration; (d) autonomy - she stated that the United States of America did not believe that international law accorded indigenous groups everywhere the right of self-determination, which had been interpreted to include the right to separate or secede from the rest of the society; (e) individual rights - since international law, with few exceptions, promoted and protected the rights of individuals, as opposed to groups, it would be confusing to state that international law accorded certain rights to "indigenous peoples" as such. She stated that for these reasons, her Government urged the working group to follow the approach taken by the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and refer to "persons belonging to

indigenous groups" rather than "peoples", and that "persons belonging to indigenous groups may exercise their rights, including those as set forth in this declaration, individually as well as in community with other members of their group, without any discrimination".

41. The representative of Canada stated that further consultations should be held among participants in order to achieve progress and that discussion should focus on articles 15 to 18 with a view to adoption at first reading, should sufficient consensus exist.

42. The observer for New Zealand said that the task of finding common ground would require all the participants to engage fully and constructively in a real dialogue. He considered it important to achieve tangible progress by reaching consensus on some substantive articles such as 15, 16, 17 and 18.

43. The observer for Australia said that it was important for the working group to make substantive progress during the current session, as a signal to the broader international community. This would include the provisional acceptance of the text of further articles and require compromise and creative engagement on the part of all parties. Progress was made last year with regard to articles 15 to 18, and it was now necessary to agree on those articles and to begin work on other articles. He also stated that the working group should continue to discuss issues central to the draft declaration, such as the issue of scope and the concept of self-determination.

44. The representative of Ecuador stated that his Government was committed to promoting the rights of indigenous peoples through constructive contribution in the realization of the draft declaration.

45. The observer for Denmark stated that in considering the draft declaration it was important to take into account the many different interests involved and that every effort should be made to break new ground with a view to protecting and securing the right of indigenous peoples who were particularly vulnerable and facing great problems and threats to their cultures and livelihood. It should be emphasized that no matter how long, difficult and lengthy the process might be, it could not be completed without the full participation of those concerned, namely the indigenous peoples. She also said that the building of confidence and mutual understanding between indigenous peoples and States, although less tangible, were also important criteria for success in the longer run.

46. The representative of China considered the draft declaration a good basis for discussion and appealed to all parties to demonstrate goodwill and flexibility in order to make further progress. She was of the view that the draft declaration should have a well-defined scope; however, with a view to facilitating the drafting process, her delegation agreed that the working group should consider this question at a later stage. Furthermore, she expressed the hope that indigenous groups would fully participate in the discussion.

47. The representative of Norway stated that the working group should make further efforts towards the adoption of articles 15 to 18 during the current session.

48. The representative of the Russian Federation stressed the need for the working group to continue to work on the text. He stated that his Government was ready to participate and support the work of the working group.

49. The representative of Argentina was of the view that human rights by nature were individual and expressed concern that collective rights might be exercised in a manner that would be detrimental to the enjoyment of individual rights. Nevertheless, he maintained that the collective stake-holding of rights, such as land rights, was not denied.

50. During the 4th formal meeting of the working group, held on 4 December 1998, the United Nations High Commissioner for Human Rights, Ms. Mary Robinson, addressed the working group. She greeted the participants and congratulated the Chairperson, Mr. José Urrutia, on his re-election. She referred to her recent visit to Canada where she had the opportunity to meet with Cree chiefs of the Four Nations of Hobbema.

51. The High Commissioner expressed her support for the Chairperson's proposal for the work of the fourth session, in particular the target to adopt articles 15, 16, 17 and 18. She emphasized the importance of having an open dialogue between indigenous and State representatives. Furthermore, she said that the declaration should establish minimum international standards for the rights of indigenous peoples. It should be of an aspirational nature whose purpose was to set out broad principles for the protection of the rights of indigenous peoples.

52. The High Commissioner, in her capacity as the Coordinator of the International Decade of the World's Indigenous People, encouraged Governments to adopt a declaration on the rights of indigenous peoples before the end of the Decade (2004). She also urged Governments to contribute to the Voluntary Fund for the International Decade.

53. The High Commissioner stated that progress should not be measured only in terms of the number of adopted articles but in the steps taken to achieve a genuine dialogue and deeper understanding of each other's aspirations and concerns. She assured the working group of her willingness to assist and facilitate a dialogue aimed at reaching consensus. In this regard, she stated that regional consultations should be considered.

54. The indigenous caucus extended greetings to the High Commissioner and expressed gratitude for her support and commitment to the protection and promotion of the human rights of indigenous peoples. It was emphasized that the General Assembly had identified the adoption of a declaration on the rights of indigenous peoples as one of the main objectives of the International Decade. Furthermore, it was said that the immediate adoption of a declaration was the minimum action necessary to establish adequate protection of the rights of indigenous peoples.

55. The indigenous caucus urged the High Commissioner to establish a mechanism of communication between her Office and indigenous peoples in order to enable them to keep her informed about their concerns.

56. Furthermore, the High Commissioner and the Secretary-General were respectfully requested to lend their support for the immediate adoption of the draft declaration.

57. At its 5th formal meeting, held on 10 December 1998, the working group celebrated the fiftieth anniversary of the Universal Declaration of Human Rights. The Chairman-Rapporteur referred to the Universal Declaration as the founding international human rights instrument. He said that the Declaration, which was adopted in 1948 in the aftermath of the Second World War, established common values and rights which applied to all peoples and nations. He said that the Universal Declaration had become the base document for the creation of an international system for the protection and promotion of human rights. He referred to the two International Covenants on Human Rights, the conventions against racial discrimination, against torture, and on the rights of the child as well as other conventions and declarations of the United Nations.

58. The Chairman-Rapporteur stated that the realization of human rights remained a challenge in the changing and complex reality which characterized international relations. He noted that it was now considered necessary to adopt a new global agenda in line with the present situation, in which human rights was a special part. He stated that the protection of indigenous rights should be part of such a new global agenda. He expressed the view that there was a need for an open spirit and flexibility to find new solutions. He also said that he supported the United Nations High Commissioner in her efforts to exchange ideas and to promote a "global partnership" for human rights. He concluded by encouraging Governments, indigenous peoples and non-governmental organizations to stay united in order to fight against the true dangers of the future such as hunger, extreme poverty, illiteracy and the exploitation of children.

59. The Deputy United Nations High Commissioner for Human Rights, Mr. Bertie Ramcharan, addressed the working group. He said that the High Commissioner and her entire Office strongly supported the work of the working group. He emphasized the importance of reaching consensus on a United Nations declaration on the rights of indigenous peoples and thereby establish international minimum standards on the rights of indigenous peoples. Furthermore, he complimented the work of the Working Group on Indigenous Populations for its important contribution to the process on the draft declaration. He informed the working group that the General Assembly, on 9 December 1998, had adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms ("Declaration on Human Rights Defenders").

60. The indigenous caucus, represented by Ms. Naomi Kipuri, presented the following joint indigenous declaration to the working group:

> "The noble and humane words of the Universal Declaration of Human Rights, which we celebrate today, shine brightly and with great hope for those who are suffering a long night of injustice. We appreciate the role of the new Deputy High Commissioner for Human Rights

and congratulate you on the new appointment. For so many people, especially many Indigenous Peoples, the words of the Declaration are filled with promises, and we wish they were actually true.

"ALL ARE EQUAL BEFORE THE LAW AND ARE ENTITLED WITHOUT ANY DISCRIMINATION TO EQUAL PROTECTION BEFORE THE LAW ... I wish it were true that all countries would surrender their laws that treat Indigenous Peoples unequally and deprive us of our rights.

"EVERYONE HAS THE RIGHT TO LIFE ... I wish it were true for those Indigenous Peoples in Africa and elsewhere who are driven from their lands and who can no longer adequately sustain themselves.

"EVERYONE HAS THE RIGHT TO OWN PROPERTY ... I wish it were true that the Australian Aboriginal Peoples and all Indigenous Peoples could enjoy the right to claim, unhindered, native title to our lands.

"NO ONE SHALL BE ARBITRARILY DEPRIVED OF HIS OR HER PROPERTY ... I wish it were true for the Maasai, the Miskitos, the Innu Indian Peoples and others whose lands are not yet recognized or respected.

"EVERYONE HAS THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION ... How I wish this were true for Indigenous Peoples whose sacred sites are despoiled and desecrated.

"NO ONE SHALL BE SUBJECTED TO TORTURE OR TO CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ... I wish it were true that Indigenous Peoples did not suffer so much and so often die in custody throughout the world.

"EVERYONE HAS THE RIGHT TO A SOCIAL AND INTERNATIONAL ORDER ... I wish it were true for so many Indigenous Peoples who suffer the barbarity and lawlessness of others. I wish for an international order in which we indigenous peoples have a full and equal role.

"We can still make the promises of the Universal Declaration come true. One great step toward fulfilling these promises will be for the countries of the world to adopt the Declaration on the Rights of Indigenous Peoples.

"Fifty years after States adopted the Universal Declaration of Human Rights, we ask ourselves what people they were thinking of when they wrote those words. For according to our understanding, as Indigenous Peoples, human rights cannot be simply individual rights, nor even just rights of human beings, but rather must be rights of all life, of nature, the forests, rivers, plants and animals.

"So, when we speak of our rights as Indigenous Peoples, we are speaking of rights of collectivities constituted of plants, animals and human life. Respecting human rights means avoiding the annihilation of diversity. Nature itself shows us the need for diversity for life.

"We salute the women and men who wrote and adopted the Universal Declaration in 1948. Perhaps they were thinking about the true meaning of human rights. But over the years, those that seek political and economic power have tarnished the ideals that inspired the Universal Declaration.

"Such is the case in the Amazon, for example, with the destruction of nature and mineral resources. From Alaska to Patagonia, from the Atlantic to the Pacific, in fact through the world, transnational companies are killing life itself, not just Indigenous Peoples.

"If we can achieve balanced, just and equal relations among peoples, we can prevent conflicts, discord and confrontations such as those that have taken place in Central and South America, Africa, Asia, the Pacific and in other parts of the world where Indigenous Peoples live. To respect human rights is to achieve peace."

61. The Chairman-Rapporteur recalled and supported the suggestion made by several delegations as well as the High Commissioner for Human Rights that regional consultations be held between Governments and indigenous peoples in an effort to facilitate the process of building further consensus prior to the fifth session of the working group. He agreed, on behalf of the working group, to follow up the matter of regional consultations with the High Commissioner as soon as possible.

62. In his concluding statement, the Chairman-Rapporteur said that the atmosphere of the fourth session had been better than at previous meetings and that he believed that the dialogue had taken place in an open and transparent manner and that the basis had been prepared for more tangible results in the future. He admitted that he had hoped to adopt one or more articles during the session, but added that he felt that adopting articles was not the only measure of progress. The Chairman-Rapporteur referred to the increased number of irformal consultations, especially between Governments and indigenous peoples on a regional basis, which he said had contributed to better understanding.

63. Although there was now a consensus on the principles underlying the articles considered at the present session, the Chairman-Rapporteur noted that there was still need to find consensus on the final text of those articles. Furthermore, he noted that all participants appeared more willing to take into consideration the points of view of others which would result in a better draft declaration.

64. The Chairman-Rapporteur proposed that at the next session of the working group, the delegates should concentrate on articles 15, 16, 17 and 18 for which there was already a good point of departure. He suggested that further discussion could be held on articles 1, 2, 12, 13, 14 and 44 in order to hear specific proposals with a view to improving the text. He said that the contacts between Governments and indigenous peoples should be increased at the regional level and that participants need not wait for the United Nations to take this initiative. He also appealed to Governments and non-governmental

organizations to contribute financially to the Voluntary Fund for Indigenous Populations so that assistance could be provided to indigenous participants and thereby facilitate the widest possible involvement of delegations.

Scope of application and the term "indigenous peoples"

65. The working group held one informal meeting on questions pertaining to the scope of application of the draft declaration and whether there was a need for a definition of the term "indigenous peoples". The Chairman-Rapporteur noted that all Governments had reaffirmed that the scope of application of the declaration must be universal. Most Governments expressed the view that it was not necessary to include a definition of "indigenous peoples" in the declaration. Many Governments recognized that self-identification is the most important factor in identifying who was indigenous. Some Governments expressed the view that a definition of "indigenous peoples" would be desirable for the sake of clarity, but that lack of a definition should not prevent the working group from progressing in its substantive work.

66. Indigenous representatives expressed the view that there was no need for a definition of "indigenous peoples", and that indigenous peoples had the right to identify themselves as indigenous and to be recognized as such. Furthermore, indigenous representatives stated that the scope of application of the declaration must be universal.

67. The Chairman-Rapporteur noted that, as a result of the fruitful exchange of views, there was a common understanding that the draft declaration should be of universal application, and that an agreement on the question of definition was not necessary to continue the discussion of the draft declaration.

Right of self-determination

68. The working group held three informal meetings on the principles underlying article 3. The Chairman-Rapporteur noted that all Governments had reaffirmed the principle that all peoples had the right of self-determination under international law. Some Governments had expressed the view that it was the entire peoples of a State which had the right of self-determination under international law, including the right to seek independence, among other possibilities. Other States had indicated that the scope of the concept of article 3 needed to be clarified further. A number of Governments had expressed their support for the principle of self-determination of indigenous peoples without prejudice to the sovereignty and territorial integrity of a State.

69. The Chairman-Rapporteur noted that one governmental delegation had expressed its strong support for article 3 as it stood, and stated that it would not be able to accept dilution of the language of the concept in article 3. He also noted that another governmental delegation had seen fundamental problems with the application of the right of self-determination in that context and had suggested alternative terminology. Furthermore, other governmental participants had said that the text of the Declaration had to state explicitly any consensus reached on the exercise of a right of self-determination for indigenous peoples.

70. Indigenous representatives considered that the inclusion of the right of self-determination was fundamental to the declaration and underlay all other provisions in the draft. It was stated that the right of self-determination of all peoples was established in international law, including human rights law, and must therefore also apply to indigenous peoples on a non-discriminatory basis. Many indigenous representatives stated that the unqualified right of self-determination was fundamental to the survival of indigenous peoples, and that this right should not be regarded as threatening the territorial integrity of existing nation States. Some indigenous representatives said that autonomy and self-government might be the principal means through which their right of self-determination would be exercised, but it could not be limited to those possibilities alone.

71. The Chairman-Rapporteur noted that some State delegations had expressed the view that consensus could be achieved provided that the exercise of the right of self-determination did not affect the territorial integrity or the sovereignty of States.

Articles 1, 2, 12, 13, 14, 44 and 45

72. The Chairman-Rapporteur said that the results of the informal meetings on articles 1, 2, 12, 13, 14, 44 and 45 had been positive. There was consensus on the principles underlying articles 1, 2, 12, 13 and 14; however, there still remained difficulties on the text. He noted that some governmental representatives had expressed the view that they would be able to adopt those articles as currently drafted. A number of Governments also said that they were prepared to formulate concrete proposals on those articles at the appropriate time. Some governmental delegations were open to proposals that would improve the text. The Chairman-Rapporteur stated that governmental delegations had held consultations on articles 44 and 45. Article 44 could be accepted with a reference to individual rights and when a solution could be found on the approach to the use of the term "peoples". As far as article 45 was concerned, none of the governmental delegations had difficulties with the present wording. However, as the article was a general provision that affected the entire draft declaration, there was consensus that its final form should be considered after the other articles had been dealt with.

Articles 15, 16, 17 and 18

73. With regard to articles 15, 16, 17 and 18, the Chairman-Rapporteur asked the governmental delegations to hold informal consultations in order to try to consolidate the different proposals presented by Governments at the third session of the working group, with a view to facilitating the discussion and adoption during the present session. As a result of those consultations, attended by a large number of governmental delegations, the Chairman-Rapporteur received an informal paper in which different governmental positions pertaining to those articles were reflected. The paper indicated that some States could accept the original wording of some or all of the articles, while other States made proposals that would be contained in annex 1 to the report of the session.

74. The Chairman-Rapporteur presented the paper to the working group as a basis for discussion on articles 15, 16, 17 and 18.

75. The Chairman-Rapporteur noted that some States had expressed the view that their proposals had not been reflected in the paper. He also noted that a number of States had indicated that they could accept the existing wording of the article or that they wished to make only minimal changes to the text or that they were prepared to consider proposals that might strengthen the text of the article.

76. With regard to article 15, alternative wording to the term "indigenous children" was proposed, including "indigenous individuals" and "persons belonging to indigenous groups/peoples". With regard to the level and form of education, some suggested that such rights should be exercised "on at least the same basis as the other members of the national society/community." Some delegations proposed that indigenous children living outside their communities should have "reasonable access" to education in their own culture and language, rather than "have the right to be provided access" to such education. There was no consensus among Governments on whether to use "should" and "shall" in this article, as well as in other articles of the draft declaration. This reflected the unresolved question of whether the declaration should be aspirational only, without establishing any firmer obligations.

77. With regard to article 16, some Governments proposed that the wording "States shall" should be added to establish an obligation and to place the obligation on States. With respect to the obligations of States, it was proposed to add "at the appropriate level" in order to reflect the federal systems of some countries.

78. With regard to article 17, some Governments proposed that these rights should be exercised "on the same basis as other members of the national society" to establish their own media in their own languages.

79. With regard to article 18, some Governments proposed to include alternative wording which reflected that international as well as national labour law expressed rights in term of the individual rather than collectivities.

80. The Chairman-Rapporteur noted that the indigenous caucus had expressed grave concern in relation to the preparation of the paper under discussion. Indigenous representatives had not participated in the elaboration of the paper. It was also stated that the working group was not engaged in a process of drafting or negotiating, and that indigenous representatives were prepared to discuss the official United Nations document approved by the Sub-Commission. In response, the Chairman-Rapporteur confirmed that the paper was not a Chairman's document or a Secretariat document, and that the working group was not engaged in a drafting or negotiating exercise.

81. Numerous indigenous delegations made interventions stating that the proposals of State delegations had not refuted the firm presumption of the integrity of the existing text; furthermore, such refutation would have to take the form of proposals that would be reasonable and necessary, and improve and strengthen the existing text, and be consistent with the fundamental principles of equality, non-discrimination and the prohibition of racial discrimination.

82. The Chairman-Rapporteur noted that indigenous representatives had stated their strong support for articles 15, 16, 17 and 18 as currently drafted, and that they had called for the adoption of those articles in their present form. (The current wording of the articles is reflected in annex II.)

83. The Chairman-Rapporteur noted that numerous indigenous delegations had, inter alia, expressed the view that the proposal to introduce square bracketing in the reference to "indigenous peoples/indigenous communities/persons belonging to indigenous groups/peoples" failed to pass the test of consistency with the principle of equality. The success of the working groups's work would depend on recognition of the equality of indigenous peoples as distinct peoples. In relation to the question of whether to use "should" or "shall", it was stated that the term "shall" was found in the Universal Declaration of Human Rights, as well as a range of other United Nations declarations. In relation to the wording "established at the appropriate level of government", it was unclear what a reference to federal systems of government in the draft declaration would achieve. It was a basic tenet of international law that in federal systems of government, it was the Federal Government that bore international responsibility for breaches of a State's international obligations. In relation to States' concerns about the resource implications of article 15, the fact that the realization of paragraph 2 was likely to be resource intensive and might encounter practical difficulties did not justify the imposition of a limitation. The key to understanding the resource requirements of article 15, and most other provisions of the draft declaration, was to be found in the first sentence of article 37. States were to take "appropriate" measures to give effect to the provisions of the draft declaration. The interpretations of "appropriate" would be conditioned by a range of factors, including budgetary constraints, practical difficulties of service delivery and other factors. In relation to the proposals of some State delegations to include a gender aspect and/or wording referring to "individual rights", it was stated that article 43, adopted by the working group last year, adequately addressed those concerns.

84. While accepting the current text, certain indigenous representatives said that they would be open to considering any proposal that might strengthen the text of the articles concerned.

85. The Chairman-Rapporteur said that the results of the three informal meetings on articles 15, 16, 17 and 18 had been positive and encouraging. He welcomed the fruitful exchanges of views and noted that there was a growing consensus in regard to those articles. Broad consensus on the underlying principles of the articles did not necessarily mean, however, that there was consensus on the final wording. There was a consensus among governmental delegations that their proposals (annex I) should be taken into account in the future work on the draft declaration, as well as other proposals that could be presented.

86. The Chairman-Rapporteur noted that a great majority of indigenous representatives had urged those governmental delegations which still had concerns and problems in relation to the articles under consideration to make every effort to achieve consensus.

Annex I

PROPOSED AMENDMENTS TO ARTICLES 15-18 FOR FUTURE DISCUSSION

Some States can accept the original wording of some or all of the following articles. Other States have made the proposals set out below, with the original wording shown in bold.

Article 15

[**Indigenous children**/Indigenous individuals/Persons belonging to indigenous [groups/peoples]/Indigenous boys and girls] **have the right to all levels and forms of education of the State** [on [at least] the same basis as the other members of the national community/society]. [**All indigenous peoples also have this right and**] [Indigenous peoples/Indigenous communities/Persons belonging to indigenous [groups/peoples]] [should] [also] have **the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning** [and in accordance with applicable education standards [and procedures] established [at the appropriate level of government/by the competent authority in consultation with these [peoples/persons].]

Indigenous children living outside their communities [**have the right to be provided**] [an education] shall/should have reasonable **access to education in their own culture and language**.

[States [**shall**/should] **take effective measures to provide appropriate** [**resources**/measures] **for these purposes**.]

Article 16

[**Indigenous peoples have the right to have**] [States [shall reflect appropriately/should reflect at the appropriate level]] [**T**]**he dignity and diversity of** [**their**] indigenous **cultures, traditions, histories and aspirations** [.] [shall/should be] [equally/**appropriately**] [**reflected**] **in all forms of education and public information** at the appropriate level.

States [**shall**/should] **take effective measures, in** [**consultation**/cooperation] **with the indigenous** [**peoples**/populations/communities] [**concerned**], in order **to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among** [**indigenous** [**peoples**/populations/communities] **and**] **all** [other] **segments of society** [, including indigenous [peoples/populations/communities]].

Article 17

[**Indigenous peoples**/Persons belonging to indigenous [groups/communities/peoples]], [on the same basis as other members of the national [community/society]/subject to national legislation], **have the right to establish their own media in their own languages** [according to national

[norms/procedures]] [. **They also have**] and [[equal rights of access to/**the right to**] [**equal access to**/equitable access to / access]] **all forms of non-indigenous media.**

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. [States, without prejudice to ensuring full freedom of expression, should promote/encourage that media adequately reflect indigenous cultural diversity.]

Article 18

[**Indigenous peoples**/Indigenous individuals/Persons belonging to indigenous [groups/peoples]] [**have the right to**]/[shall/should] **enjoy fully all rights** [deriving from/**established under**] [[applicable] **international labour law** [applicable to the state] **and national labour** [**legislation**] law /treaties ratified by the State in which they live and applicable national labour law]. [Indigenous children should be protected from [exploitative forms of child labour/the worst forms of child labour].]

[**Indigenous individuals**/Persons belonging to indigenous [groups/peoples]] **have the right not to be subjected to any discriminatory conditions of labour, employment or salary**/[discrimination in conditions of employment and work]. [States shall ensure through their legislation that indigenous individuals are not subjected to any discriminatory conditions of labour, employment or salary.]

Annex II

ARTICLES 15-18

Indigenous representatives and some governmental delegations supported the current wording of articles 15, 16, 17 and 18. The articles are reproduced below.

Article 15

Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Indigenous children living outside their communities have the right to be provided access to education in their own culture and language.

States shall take effective measures to provide appropriate resources for these purposes.

Article 16

Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information.

States shall take effective measures, in consultation with the indigenous peoples concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society.

Article 17

Indigenous peoples have the right to establish their own media in their own languages. They also have the right to equal access to all forms of non-indigenous media.

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity.

Article 18

Indigenous peoples have the right to enjoy fully all rights established under international labour law and national labour legislation.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, employment or salary.

Annex III

COMMENTS BY THE NON-GOVERNMENTAL ORGANIZATION MOVIMIENTO INDIO "TUPAJ AMARU" ON ARTICLES 15, 17 AND 18

Article 15

All indigenous peoples have a collective and individual right to free, comprehensive and diversified education at all levels and in all forms of basic, middle and higher education in their own languages, including bilingual education. They are also entitled to formulate policy for their own education systems and teaching institutions, [and to] manage and administer for themselves the resources assigned to education.

States recognize education as their highest function and agree to orient teaching towards the full development of the human personality, providing sufficient resources to carry out and comply with the provisions of this declaration.

Article 17

Indigenous peoples have the right to establish their own media in their own languages. They also have the right to equal access to all existing mass communications media, [and to] set up radio and television broadcasting networks in indigenous languages with a view to inculcating respect for their identity in indigenous people and fostering friendship among different social groups.

States shall take appropriate action to ensure that State-owned media duly reflect multinational and multicultural diversity.

Article 18

Under the international conventions adopted by ILO, indigenous peoples have the right to pursue their material welfare and intellectual development in dignity. Every indigenous person has the right to work without distinction or discrimination on grounds of his identity, and the right to "equal pay for equal work", to satisfactory health conditions and to social security.

Pursuant to their labour legislation, States shall take appropriate action to ensure effective protection in matters of hiring and working conditions, especially legal protection for children against illegal exploitation, that might have damaging consequences for their health, education and physical and mental development.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/83
25 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Agenda item 15

INDIGENOUS ISSUES

Report of the open-ended inter-sessional ad hoc working group on a permanent forum for indigenous people in the United Nations system

Chairman-Rapporteur: Mr. Richard van Rijssen (Netherlands)

GE.99-11705 (E)

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Introduction

Establishment of the working group

1. In its resolution 1998/20 of 9 April 1998 the Commission on Human Rights decided to establish an open-ended inter-sessional ad hoc working group, from within existing United Nations resources, to elaborate and consider further proposals for the establishment of a permanent forum for indigenous people in the United Nations system. This decision was endorsed by the Economic and Social Council in its resolution 1998/247 of 30 July 1998. The Commission on Human Rights requested the ad hoc working group to take into account in its work the reports of the two workshops and any comments received from Governments, United Nations bodies and organizations, specialized agencies, indigenous organizations and the Working Group on Indigenous Populations, as well as such ideas as the High Commissioner for Human Rights, in her role as Coordinator for the International Decade of the World's Indigenous People, might wish to present to the ad hoc working group.

I. ORGANIZATION OF THE SESSION

A. Opening of the session

2. The working group held meetings during the period 15-19 February 1999. A total of 211 people attended these meetings, including representatives of 44 Governments, 5 specialized agencies, 1 regional body and 54 indigenous and non-governmental organizations.

3. The session was opened by the Deputy High Commissioner for Human Rights, Mr. Bertrand Ramcharan, on behalf of the High Commissioner for Human Rights and Coordinator of the Decade, Mrs. Mary Robinson. He provided a brief review of the historical process pertaining to the proposed permanent forum for indigenous peoples 1/ and said that he believed that the meetings of the working group would be another step towards the establishment of an effective and competent body within the United Nations with the capacity to contribute to the protection and promotion of the rights of indigenous peoples. He recalled General Assembly resolution 50/157, in which the Assembly had recognized among the important objectives of the Decade consideration of the establishment of a permanent forum for indigenous peoples within the United Nations.

B. Election of the Chairman-Rapporteur

4. At its first meeting, the working group unanimously elected Mr. Richard van Rijssen (the Netherlands) as its Chairman-Rapporteur.

5. Indigenous representatives proposed that an indigenous person should

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1/ The present report is solely a record of the debate and does not imply acceptance of the usage of either the expression "indigenous peoples" or "indigenous people". In this report both terms are used without prejudice to the positions of particular delegations, where divergences of approach remain.

be elected as co-chairman of the working group. The Chairman-Rapporteur informed the working group that he had consulted governmental delegations on the possibility of having an indigenous co-chairman. He said that several governmental delegations had expressed the view that the rules of procedure of the functional commissions of the Economic and Social Council did not allow the working group to elect any person who was not a representative of a Member State as one of its officers. Reference was made to rule 15 of the rules of procedure.

6. An indigenous representative requested the working group, through the Chairman-Rapporteur, to seek a legal opinion from the Office of Legal Affairs of the United Nations on this matter. In this context, reference was made to rules 23 and 24 of the rules of procedure.

7. The working group sent the following memorandum to the Office of Legal Affairs concerning the interpretation of the rules of procedure:

> "Participants at the open-ended inter-sessional ad hoc working group of the Commission on Human Rights on a permanent forum for indigenous people meeting in Room XVII, this week (15-19 February 1999), have requested a legal opinion of the Office of Legal Affairs of the United Nations in relation to the rules of procedure of the functional commissions of the Economic and Social Council. They ask whether the rules of procedure preclude the possibility of or allow for the working group nominating a representative of an indigenous organization as a co-chairman of the session or as any other officer."

8. At the sixth formal meeting, the Chairman-Rapporteur read out a facsimile from the Senior Legal Officer at the United Nations Office in Geneva to the Office of Legal Affairs at United Nations Headquarters in New York:

> "According to my own reading of the rules of procedure, co-chairmen of the working group can only be nominated from among its members, not observers. Could you please give me your guidance on this?"

9. At the seventh formal meeting, the Chairman-Rapporteur read out a memorandum from the Office of Legal Affairs at the United Nations Headquarters in New York to the Senior Legal Officer in Geneva:

> "This is with reference to your facsimile of 15 February 1999 concerning the request for a legal opinion by the open-ended inter-sessional ad hoc working group of the Commission on Human Rights on a permanent forum for indigenous people. In particular, they ask whether the rules of procedure preclude the possibility of or allow for the working group nominating a representative of an indigenous organization as a co-chairman of the session or as any other officer.
>
> "Pursuant to rule 24 of the rules of procedure of the functional commissions of the Economic and Social Council, the rules of procedure of the Commission shall apply to the proceedings of its subsidiary organs in so far as they are applicable. In its relevant part, rule 15 provides 'the Commission shall elect, from among the representatives of

its members, a Chairman, one or more Vice-Chairmen and such other officers as may be required'.

"As the Bureau must be elected from among the representatives of the members of the Commission, rule 15 therefore precludes the possibility of nominating a representative of an indigenous organization as a chairman, vice-chairman or any other officer. Moreover, it should be noted that rule 15 explicitly provides for a Chairman. The rules of procedure therefore also preclude the possibility of co-chairmen."

C. Documentation

10. The Working Group had before it the following documents:

Provisional agenda (E/CN.4/AC.47/1999/1);

Note by the secretariat: brief technical presentation of the structure of the United Nations (E/CN.4/AC.47/1999/2);

Note by the secretariat: information concerning financial and secretariat implications (E/CN.4/AC.47/1999/3);

Information received from indigenous organizations pertaining to the permanent forum (E/CN.4/AC.47/1999/4);

Information received from indigenous organizations pertaining to the permanent forum (E/CN.4/AC.47/1999/4/Add.1);

Information received from the Government of Spain pertaining to the permanent forum (the document had been presented to the secretariat in due time, but for technical reasons it was not available in an official version);

Information received from the Government of Switzerland pertaining to the permanent forum (the document had been presented to the secretariat in due time, but for technical reasons it was not available in an official version);

Draft report of the open-ended inter-sessional ad hoc working group on a permanent forum for indigenous people in the United Nations system (E/CN.4/AC.4/1999/CRP.1-6);

List of attendance (E/CN.4/AC.4/1999/INF.1).

11. The following background documents were made available to the working group:

Rules of procedure of the functional commissions of the Economic and Social Council (E/5975/Rev.1);

Commission on Human Rights resolution 1998/20, entitled "A permanent forum for indigenous people in the United Nations system";

General Assembly resolution 48/141, entitled "High Commissioner for the promotion and protection of human rights";

Vienna Declaration and Programme of Action (A/CONF.157/23);

Report of the second workshop on a permanent forum for indigenous people within the United Nations system held in accordance with Commission on Human Rights resolution 1997/30 (E/CN.4/1998/11 and Adds.1-3);

Report of the workshop held in accordance with Commission resolution 1995/30 (E/CN.4/Sub.2/AC.4/1995/7);

Report of the Secretary-General: Review of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people (A/51/493).

D. Adoption of the agenda

12. The working group adopted the following agenda, as contained in document E/CN.4/AC.4/1991/1):

1. Election of officers.

2. Adoption of the agenda.

3. Organization of work.

4. Proposals for the possible establishment of a permanent forum for indigenous people:

   (a) Mandate and terms of reference for the activities to be undertaken by the forum;

   (b) Membership;

   (c) Financial and secretariat implications;

   (d) The United Nations body to which the proposed forum would report;

   (e) Location of the forum;

   (f) Name of the forum;

   (g) Other matters.

5. Participation of indigenous people in the work of the United Nations system, including the role and function of the Working Group on Indigenous Populations.

6. Follow-up.

7. Report to be submitted to the Commission on Human Rights at its fifty-fifth session.

E. Participation

13. The following States members of the Commission on Human Rights were represented: Argentina, Bangladesh, Canada, Chile, China, Colombia, Cuba, Ecuador, El Salvador, France, Germany, Guatemala, India, Indonesia, Ireland, Japan, Mexico, Morocco, Norway, Peru, Philippines, Russian Federation, Sri Lanka, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

14. The following States members of the United Nations were represented by observers: Australia, Belgium, Bolivia, Brazil, Costa Rica, Denmark, Estonia, Finland, Honduras, Malaysia, Netherlands, New Zealand, Paraguay, Spain, Sweden, Ukraine.

15. The following non-member States were represented by observers: Holy See and Switzerland.

16. The following United Nations bodies and specialized agencies were represented by observers: Office of the United Nations High Commissioner for Refugees, Secretariat of the Convention on Biological Diversity, International Labour Office, World Health Organization, World Intellectual Property Organization.

17. The following regional body was represented by an observer: the European Parliament.

18. The following indigenous and non-governmental organizations in consultative status with the Economic and Social Council were represented by observers:

Indigenous organizations: Aboriginal and Torres Strait Islanders Commission (ATSIC), Asociación Napguana, Consejo Indio de Sud America, Grand Council of the Crees (Eeyou Itschee), Indian Movement "Tupaj Amaru", Indigenous World Association, International Indian Treaty Council, International Organization of Indigenous Resource Development, Indian Law Resource Center, Inuit Circumpolar Conference, National Aboriginal and Islanders Legal Services Secretariat, New South Wales Aboriginal Land Council, Saami Council.

Non-governmental organizations: Academic Council on the United Nations System, Asian Buddhist Conference for Peace, Asian Cultural Forum on Development, Centre Europe-Tiers Monde, International League for the Rights and Liberation of Peoples, International Movement Against All Forms of Racism and Discrimination, International Peace Bureau, International Service for Human Rights, International Work Group for Indigenous Affairs, North-South XXI, Society for Threatened Peoples, Terre des Hommes, World Council of Churches.

19. The following organizations of indigenous people accredited in accordance with Commission on Human Rights resolution 1995/32 were represented by observers: Aboriginal Legal Service of Western Australia, Assembly of First Nations, Ainu Association of Sapporo, Association Nouvelle pour la Culture et des Arts Populaires, Association of the Shoria People, Asociacion Tea-Amaro Runa, Chittagong Hill Tracts Peace Campaign, Comisión Jurídica de los Pueblos de Integración Tahuantinsuyana, Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos, Innu Council Nitassinan, Consejo de Todas las Tierras Mapuche, Consejo Inter-Regional Mapuche, Consultative Committee of Finno-Ugric Peoples, Cordillera Peoples Alliance, Faira Aboriginal Corporation, Indigenous Woman Aboriginal Corporation, International Alliance of Indigenous and Tribal Peoples of the Tropical Forests, Nepal Federation of Nationalities, MAA Development Association, Mejlis of Crimean Tatar Peoples, National Confederation of Indigenous Peoples of the Philippines, Nepal Indigenous Peoples Development and Information Service Centre, Organización Regional de la Mujer Indígena, Russian Association of Indigenous Peoples of the North, South East Treaty Four Tribal Council, Taller de Historia Oral Andina, Te Kawau Maro.

F. Organization of work

20. In his opening statement, the Chairman-Rapporteur encouraged the participants to avoid lengthy general statements and proposed that the speaking time should be limited to three minutes. He presented a draft programme of work and a provisional timetable for the session, which were adopted by the working group.

21. The following substantive agenda items were discussed in formal meetings: mandate; membership and participation; and the United Nations body to which the proposed forum would report. The Chairman-Rapporteur suggested making use of "co-facilitators" on each of these subjects, one of them being a governmental representative, the other an indigenous representative. This suggestion was agreed to by the participants.

22. The following agenda items were discussed in informal meetings: location of the forum; name of the forum; financial and secretariat implications; the role and function of the Working Group on Indigenous Populations; and other matters.

23. The Working Group held eight formal and two informal meetings during the period 15-19 February 1999.

24. The Working Group formally adopted the report on 24 March 1999. The Chairman-Rapporteur noted that the report had been adopted ad referendum on 19 February 1999 in the presence of all participants. He explained that he had undertaken to assure indigenous participants that there would be no substantive changes to the text; however, at the request of delegations, translation into the working languages was necessary before formal adoption of the report.

II. GENERAL DEBATE

25. A number of governmental and indigenous representatives made general statements in support of the establishment of a permanent forum for indigenous peoples within the United Nations.

26. Many participants stated that it was important that the ad hoc working group take into account in its work the Vienna Declaration and Programme of Action, the reports of the two United Nations workshops on a permanent forum for indigenous peoples (held in Copenhagen, Denmark and Santiago, Chile), the Programme of Action for the International Decade of the World's Indigenous People and all resolutions and declarations pertaining to the establishment of a permanent forum.

27. At the start of the fifth meeting, the Chairman-Rapporteur invited an elder from the Inuit people to say an opening prayer. The elder invited all participants to pray for the traditional elders who had passed away, as they had given guidance and helped indigenous peoples to have access to the United Nations.

28. In closing the last meeting of the session, the Chairman-Rapporteur referred to the fact that the conference room which had been allocated to the working group had been forcibly occupied for several days by a group involved in an ongoing political conflict, an incident which had made the work of the working group very difficult. He said that despite the resulting setbacks to the programme and the many problems the secretariat had had to overcome, the work which had been accomplished was impressive.

29. The Chairman-Rapporteur said that after many years of good intentions and abstract debate, the working group had been able to start to address concrete and detailed questions pertaining to the establishment of a permanent forum. The creation of a new and permanent United Nations body obviously had many technical, financial, organizational and political implications. The working group had been able to cover quite a number of those issues. Moreover, the working group had been able to converge largely on a majority of the many outstanding problems. The working group had made great progress, both substantively and substantially.

III. MANDATE AND TERMS OF REFERENCE FOR THE ACTIVITIES TO BE UNDERTAKEN BY THE FORUM

30. The working group held two formal meetings on questions relating to the mandate and terms of reference of the forum. The representative of the Government of Mexico and Ms. Vicky Tauli-Corpuz agreed to act as co-facilitators. The delegation of Mexico presented an individual summary of the debate pertaining to the mandate (see annex III).

31. Indigenous as well as many governmental representatives expressed the view that the mandate of the permanent forum should be sufficiently broad to cover all issues affecting indigenous peoples. It was emphasized that it was crucial that the mandate should be broad and comprehensive and that it should go beyond dealing with human rights.

32. Many governmental representatives expressed the view that the permanent forum should deal with all issues affecting indigenous peoples. In this context, some governmental representatives referred to the goal of the International Decade of the World's Indigenous People (1995-2004), which was to strengthen international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health.

33. Many Governments recalled the Vienna Declaration adopted by the World Conference on Human Rights, in accordance with which States should ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them. Reference was also made to the Vienna Programme of Action, in which it was recommended that consideration be given to the establishment of a permanent forum for indigenous people within the United Nations system.

34. In arguing in favour of the establishment of a permanent forum, many governmental and indigenous representatives referred to the review of the Secretary-General of existing mechanisms, procedures and programmes within the United Nations concerning indigenous peoples (A/51/493), in which it was stated that there were no mechanisms to ensure regular exchange of information and views between Governments, indigenous peoples and the United Nations system on an ongoing basis.

35. Some governmental delegations expressed the view that there was a linkage between the current work of the working group of the Commission on Human Rights on the draft declaration and the future mandate of a permanent forum.

36. Many governmental representatives expressed the view that the permanent forum would have an important role to play in coordinating United Nations activities pertaining to indigenous peoples. The view was also expressed that the forum should be mandated to make recommendations and provide advice to Governments and United Nations bodies and organs on indigenous issues. Furthermore, it was stated that the forum should disseminate information on the conditions and needs of indigenous peoples and that it should promote greater understanding among nations and peoples of the world.

37. Some governmental representatives expressed reservations with regard to the proposed inclusion of standards development and policy-making elements in the mandate of the forum. A number of governmental representatives expressed reservations with regard to the proposal that the permanent forum should give advice and guidance to Governments on matters relating to indigenous issues.

38. Indigenous representatives expressed the view that the overall goal of the permanent forum should be to promote peace and prosperity in accordance with the Charter of the United Nations. In that regard, it was emphasized, the forum would have an important role to play in the development of friendly relations among nations and peoples based on respect for the principle of equal rights.

39. Indigenous representatives were of the opinion that the forum should deal effectively with the full range of issues covered by the Economic and

Social Council. It was considered that the mandate of the forum should include, but not be limited to, the submission of proposals, recommendations and reports to the Economic and Social Council. Many indigenous representatives emphasized that it was of paramount importance to include conflict prevention and resolution in the mandate of the forum.

40. Many indigenous representatives also expressed the view that the forum should be mandated to develop international standards on the rights of indigenous peoples, as well as to ensure implementation of existing international standards pertaining to the rights of indigenous peoples. Furthermore, indigenous and some governmental representatives stated that it was important to ensure that the mandate of the forum also included development strategies and a policy-making element.

41. Many governmental representatives pointed out that the maintenance of international peace and security was the prerogative of the United Nations Security Council, as laid down in the Charter of the United Nations. Therefore, it would not be acceptable to include conflict prevention and conflict resolution in the mandate of the permanent forum.

42. Most governmental representatives expressed the view that it was important to avoid duplication of the work of other United Nations bodies or organs.

43. Some governmental representative said that, although they had gladly participated in the working group, their final position on a number of issues had not been determined. They would formulate their views at a later stage, after having taken into account the ideas and suggestions expressed in the working group.

44. While supporting the idea of a broad mandate, some governmental delegations emphasized that it should also be precise. In this regard, a reference was made to the need for a clear legal framework for the permanent forum.

45. The Chairman-Rapporteur summarized the debate pertaining to the mandate and terms of reference for the activities to be undertaken by the forum. This summary can be found in annex II.

IV. MEMBERSHIP AND PARTICIPATION

46. The working group held two formal meetings on questions relating to membership and participation in the permanent forum. The representative of Denmark and Ms. Tarcila Rivera Lea agreed to act as co-facilitators.

47. All participants considered that the principle of full, free and active participation of indigenous peoples in the permanent forum was fundamental. In this regard, some delegations expressed the view that it would not work to copy the rules and procedures of other United Nations bodies and organs as the permanent forum would be a new and unique body of the United Nations.

48. Some governmental representatives referred to the open and flexible formula of the Working Group on Indigenous Populations as a model for the structure of the permanent forum. They noted that the Working Group on Indigenous Populations operated as an expert body, with representatives of Governments and indigenous groups participating as observers.

49. Many governmental and indigenous representatives suggested that the permanent forum should have an assembly with a large and open composition and a "core group" or an "executive committee". The core group should have the right to take decisions on matters relating to its agenda and methods of work. Many expressed the view that the core group should take decisions on the basis of consensus.

50. Many governmental and indigenous representatives expressed the view that the forum should also be open to observers, including representatives of non-governmental organizations, Governments, United Nations agencies, bodies and organs with the right to speak and to submit proposals. Some were of the opinion that independent experts should be able to participate freely in the forum as observers, while the representatives of some indigenous organizations expressed the view that individual experts should be allowed to participate only if and when called upon by the forum. Some governmental representatives said that international financial institutions should also be able to participate in the forum.

51. Many governmental and indigenous representatives considered that non-governmental organizations should be able to participate regardless of whether they were in consultative status with the Economic and Social Council.

52. Many governmental delegations said that the core group should consist of governmental and indigenous representatives in an equal number and on an equal footing. That would demonstrate partnership and equality between indigenous peoples and Governments. In that regard, a number of governmental and indigenous representatives made reference to the International Labour Organization model as an example of a formula which included non-governmental entities in a full and effective manner. Some delegations expressed the view that the core group should consist of both governmental and indigenous representatives, elected in accordance with their respective practices and procedures. It was said that members could be elected or appointed for a limited period of time on a rotating basis, and they could serve either in an official or in a personal capacity, in particular indigenous representatives stated that the status of the representatives should be equal.

53. Some governmental representatives expressed reservation with regard to the suggested equal status of indigenous and governmental participants in the permanent forum.

54. Some governmental representatives considered that the participation of indigenous peoples in the permanent forum was linked to the mandate entrusted to it. There were practical limitations to the participation of indigenous peoples and criteria needed to be developed for their representation. Some governmental delegations stated that election of indigenous representatives should take place through national mechanisms.

55. Some governmental delegations expressed the view that determining the definition of indigenous peoples would contribute to the establishment of a permanent forum and facilitate the discussion, as it would then be clear for whom the activities of the forum would be intended. However, it was stated that it would not be necessary to discuss a definition at the current stage.

56. Several indigenous representatives stated that there was no reason for having a definition of indigenous peoples. The issue of a definition should not be used to block the establishment of a permanent forum for indigenous peoples.

57. Many delegations made statements pertaining to the size of the permanent forum. The numbers that were mentioned as the optimum size for the core group or executive committee ranged between 5 and 30 members. Other delegations did not indicate any preferences regarding the number of members and said that they were flexible in that respect. However, some governmental representatives expressed the view that a smaller number would be more rational. It would be easier to reach consensus and the forum would be more efficient and cost-effective.

58. The indigenous and most governmental representatives expressed the view that it was of great importance that indigenous peoples should be given the possibility to elect their own representatives according to their own practices and procedures. It was also emphasized that it was important to take into account a geographical balance. In this respect, several delegations stated that it was important to look at the actual distribution of indigenous peoples throughout the world. According to some delegations, the five existing regions used within the United Nations system did not apply to indigenous peoples. It was said that Asia and the Pacific should be considered as two distinct regions. Furthermore, it was said that the Russian Federation should be considered as a separate region. It was also suggested that representation by language regions could be considered.

59. The Chairman-Rapporteur summarized the debate pertaining to membership and participation (see annex II).

V. THE UNITED NATIONS BODY TO WHICH THE PROPOSED FORUM WOULD REPORT

60. The working group held one formal meeting on questions relating to which United Nations body the proposed forum would report to. The Chairman-Rapporteur encouraged the participants to consider whether it would be acceptable to "establish the permanent forum, in one way or another, around the Economic and Social Council". The representative of Bangladesh and Mr. Willy Littlechild agreed to act as co-facilitators.

61. A number of governmental representatives expressed the view that the forum should be linked to the Economic and Social Council. Many governmental representatives stated that it would be logical to attach the forum, in one way or another, to the Council owing to the general agreement that the forum should be given the broadest possible mandate. However, some governmental representatives stated that the final placement of the forum would have to be decided on the basis of the outcome of the discussion on the mandate.

62. Many governmental representatives expressed the view that the forum should be placed directly under the Economic and Social Council, at the level of the functional commissions and standing committees. Some said that the forum should be a functional commission of the Council.

63. Some governmental representatives expressed the view that the forum should report to the Economic and Social Council through the Commission on Human Rights.

64. Indigenous representatives stated that the forum should be established at the highest possible level within the United Nations and that the level of the Economic and Social Council was the lowest acceptable level. Many indigenous representatives stated that it would not be acceptable to have a forum which reported to the Economic and Social Council through the Commission on Human Rights. It was said that it would not be possible to have a forum with a broad mandate, going beyond human rights, reporting to the Council through the Commission on Human Rights. Moreover, all the subsidiary organs of the Commission on Human Rights, except the Sub-Commission on Prevention of Discrimination and Protection of Minorities, were temporary organs. Therefore, it would not be possible to establish a permanent forum under the Commission on Human Rights.

65. Many indigenous representatives expressed the view that the forum should be established as a functional commission of the Economic and Social Council, while other indigenous representatives considered that it should be linked to the Economic and Social Council, in one way or another, although they were not in a position to identify the exact placement in the system at the current time.

66. Some indigenous representatives expressed the view that the forum should be directly linked to the General Assembly of the United Nations. Some indigenous representatives also suggested that the forum might, alternatively, be established as an advisory forum for the Office of the Secretary-General of the United Nations.

67. The Chairman-Rapporteur gave a brief summary of the debate pertaining to the United Nations body to which the proposed forum would report (see annex II).

VI. FINANCIAL AND SECRETARIAT IMPLICATIONS; LOCATION OF THE FORUM; AND NAME OF FORUM

68. Useful informal discussions on secretariat, financial, technical and practical matters relating to the permanent forum took place. However, no common proposals and suggestions were elaborated.

VII. FOLLOW-UP

69. The Chairman-Rapporteur introduced item 6 of the agenda on follow-up to the ad hoc working group. He reminded the working group that follow-up was not strictly part of the mandate of the working group. He emphasized that governmental representatives would have the opportunity to express their views to the Commission on Human Rights during its fifty-fifth session. In that

context, he encouraged in particular the indigenous representatives to address the issue of follow-up. He added that, as the future of the ad hoc working group and, to an extent, his own role as Chairman-Rapporteur were under discussion, he thought it inappropriate to offer his own opinions on the matter. He would therefore only provide a technical chairmanship during the working group's deliberations on that agenda item.

70. Many governmental as well as indigenous representatives supported the proposal that the Commission on Human Rights should authorize the ad hoc working group to hold a session of eight working days with a view to finalizing its work and submitting one or more concrete proposals for consideration and adoption by the Commission at its fifty-sixth session. In this context, it was recommended that the Chairman-Rapporteur of the ad hoc working group should be authorized to consult with Governments and indigenous peoples with a view to drawing up a consolidated text on the establishment of a permanent forum, including if necessary alternative suggestions, for consideration at the next session of the ad hoc working group.

71. It was also suggested that discussions and consultations between Governments and indigenous peoples should continue between the current session and any future meetings on the permanent forum.

72. A few governmental representatives expressed some hesitation with regard to a further session of the ad hoc working group. Such a session would have financial implications, which the Commission on Human Rights would have to take into account in its consideration of whether a second session should be held.

Discussion of recommendations and proposals

73. On the basis of the summaries of the Chairman-Rapporteur, the working group had an exchange of views on the possibility of making proposals to the Commission on Human Rights. The Chairman-Rapporteur had drafted a conference room paper (CRP.4) in order to guide the work of the working group. After discussion on the character of the proposals, it was decided that a "basis for future work" should be annexed to the report. Although most delegations would have agreed to the contents of CRP.4, the Chairman-Rapporteur concluded that, despite broad agreement, it would be advisable to attach it as an annex under his responsibility as Chairman-Rapporteur.

VIII. SPECIFIC COMMENTS BY INDIVIDUAL DELEGATIONS

74. This section of the report contains comments and summaries of statements by individual delegations, which have been included in the report at the request of the delegations concerned.

75. The representative of the Government of the United States of America said that any forum must be realistic in terms of resources. It was essential that any discussion on the question of the possible establishment of a permanent forum be realistic in resource terms and accurately reflect the ongoing fundamental reform of the United Nations system. Any proposal must be examined in light of (i) a constrained United Nations budget which leaves no room for net growth in the organization; (ii) the imperative to avoid

duplication and to direct scarce United Nations system resources to activities having the greatest impact and benefits; and (iii) the availability of voluntary funding.

76. With regard to the membership, the representative of the Government of the United States of America stated that any forum must appropriately reflect the level of participation of indigenous groups. The United States supports appropriate indigenous involvement in the consideration of indigenous issues throughout the United Nations system and other forums. Any proposal for the establishment of a permanent forum must include appropriate, non-restrictive modalities for indigenous participation. We are drawn to the model of open participation in the Working Group on Indigenous Populations which is non-restrictive for indigenous groups. In the Working Group on Indigenous Populations both governments and indigenous groups have observer status; the group is headed by five independent experts. An expert body of this nature could serve as the basis for the structure of any new permanent forum.

77. The representative of the Government of Denmark pointed out that the establishment of the permanent forum should be subject to a review clause which would allow for adjustments to be made with regard to the mandate, composition and rules of procedure of the forum in the light of experience gained over a certain period of time, for example, every five years. Thus the establishment of the permanent forum might not be perfect in the sense of satisfying everybody's wishes from the very start, but might gain strength during an evolutionary process.

78. The representative of the Government of Australia expressed the view that, for many years, the Working Group on Indigenous Populations had fulfilled an important function. However, it had largely completed its work and was therefore looking at a possible new body to advance indigenous interests in the United Nations context. For reasons of function, efficiency, focus and effective utilization of resources, the Government of Australia would not be in a position to accept the establishment of a permanent forum without some decision on the future of the Working Group on Indigenous Populations. The possibility of some sort of transition mechanism could be looked at but, basically, one body would have to replace the other. Furthermore, the representative of Australia expressed the view that the permanent forum would have to be budget neutral. Funding should continue to come from the regular budget of the United Nations, but voluntary contributions should also be allowed.

79. The representative of India said that his delegation was still not fully convinced that an adequate case had been made for the establishment of a separate permanent forum. Further explanation was required of why broadening the mandate of the Working Group on Indigenous Populations would not be sufficient. He also inquired whether it would not be better to enhance the participation of indigenous people in such bodies as ILO, WHO, UNESCO and other agencies. It was unclear what additional value the inclusion of "human rights" in the mandate of the permanent forum would be, since the present proliferation of human rights mechanisms within the United Nations system had reduced, rather than improved, efficiency and effectiveness. The representative also pointed out that a number of Asian countries had raised

the issue of a definition of "indigenous people" and that it was not feasible to set up a permanent forum until this issue had been resolved.

80. The representative of Switzerland expressed the view that the permanent forum should be financed through the regular budget of the United Nations. However, that should not prevent voluntary contributions from Governments or other entities. He stated that the permanent forum should be located at the United Nations Office in Geneva, where it could benefit from contacts with many specialized agencies, including the International Labour Office, the World Health Organization and the World Intellectual Property Organization. Furthermore, the creation of the permanent forum should eventually bring to an end the existence of the Working Group on Indigenous Populations as its mandate would entirely become part of the mandate of the permanent forum.

81. The representative of Paraguay expressed support for the creation of a permanent forum which would coordinate, promote and advise on all issues regarding indigenous peoples, including their civil, political, economic, social and cultural rights. The mandate must be as broad as possible.

82. The representative of the Government of Brazil said that her Government was willing to consider any proposals for improved participation of indigenous people in the work of the United Nations. She said that her Government was one of the sponsors of the resolutions adopted by the General Assembly at its fifty-third session pertaining to the International Decade of the World's Indigenous People. That reflected the Government of Brazil's commitment to contribute to the implementation of the Programme of Action and objectives of the Decade, as well as to the promotion of the rights of indigenous people. As far as the permanent forum was concerned, her Government acknowledged the meaningful work undertaken by the Working Group on Indigenous Populations, both in terms of standard-setting and in reviewing developments. The valuable experience of that Working Group and its flexible rules regarding the participation of indigenous organizations should be taken into account in the debate concerning the permanent forum. Furthermore, in the realm of possible solutions, one might be found in the reviewing of the mandate of the WGIP in order to include development, health, culture, education, and by increasing the number of experts - some of whom could be appointed by indigenous organizations. It was important, in any solution envisaged, that Governments maintained their prime responsibility of ensuring the framework for the promotion of initiatives for the International Decade of the World's Indigenous People. Finally, the representative of Brazil stated that contacts between the United Nations and national indigenous groups should continue to be channelled through governmental representatives.

83. The representative of the Government of New Zealand stated that his Government supported the development of an advisory and coordinating body on indigenous issues within the United Nations. That body should have a broad mandate extending beyond human rights to reflect wider issues of concern to indigenous people across the work of the United Nations system. He emphasized that it was important that the forum be of a type and status that would permit indigenous representatives to participate as fully as possible alongside States. Although the representative of the Government of New Zealand said that his Government did not have a firm view on the placement of the forum in the United Nations system, given the broad advisory and coordinating mandate

of the forum it would seem logical that it report directly to the Economic and Social Council. Lastly, the permanent forum should be funded through the regular budget of the United Nations on the basis that savings would be possible from amalgamation with, or disestablishment of, the Working Group on Indigenous Populations. Funding could be supplemented by voluntary contributions.

84. The representative of the Tukum Uman Council expressed support for the continued existence of the Working Group on Indigenous Populations. A representative of the Mayan people of Guatemala said that the mandate of the forum should include policy making and conflict resolution. The forum should monitor the human rights situations of indigenous peoples. Moreover, the forum should contribute to the formulation of national public policies affecting indigenous peoples.

85. Some indigenous representatives from Bolivia, Ecuador, Guatemala and Mexico expressed the view that broad participation of indigenous people in the permanent forum should be ensured. The structure of the permanent forum should resemble a general assembly composed of representatives of indigenous peoples or organizations and of governmental representatives. Furthermore, the permanent forum should have an executive council composed of 41 indigenous and governmental representatives, 20 from each group, participating on an equal footing. The general assembly should be able to discuss issues defined in the mandate of the permanent forum and should be able to take decisions. With regard to the executive council, it should be mandated to make its own rules of procedure.

86. The representative of Consejo Indio de Sud America (CISA) said that the permanent forum should have decision-making power. In addition, the forum should have a role to play in conflict prevention throughout the world. It should have a broad mandate and be linked to the Economic and Social Council. The representative of CISA also expressed the view that the forum should be funded through the regular budget of the United Nations and that it should have a permanent secretariat in Geneva.

87. The representative of Comité Intertribal expressed the view that the permanent forum should have a broad mandate and be linked to the Economic and Social Council. With regard to membership, indigenous and governmental representatives should be on an equal footing. The forum should be funded through the regular budget of the United Nations.

88. The representative of Coordinadora de las Organizaciones Indígenas de la Cuenca Amazonica (COICA) expressed the view that the permanent forum should be established as a subsidiary body of the Economic and Social Council. Its mandate should be broad and cover all issues affecting indigenous peoples. With regard to membership, the forum should have an equal number of indigenous and governmental representatives, in total 20 members. Moreover, indigenous peoples, communities and organizations, Governments, United Nations bodies and agencies, and intergovernmental and non-governmental organizations should be allowed to participate as observers, regardless of whether they were in consultative status with the Economic and Social Council. The forum and its

secretariat should be established in New York and be funded through the regular budget of the United Nations; its secretariat should be staffed by indigenous persons.

89. The representative of the New South Wales Aboriginal Land Council expressed the view that the forum should have a broad scope and deal with all matters that concerned indigenous peoples, including human rights, the environment, development, health and education, as well as cultural integrity and conflict prevention. The forum could be established either as an advisory body to the General Assembly or the Secretary-General, or at the level of the Economic and Social Council. It was proposed that 10 members should be appointed by the Secretary-General: 5 governmental members, 5 indigenous representatives and 5 independent experts. The forum should be funded through the regular budget of the United Nations. With regard to the future role of the Working Group on Indigenous Populations, it should continue to have a role to play in the field of indigenous rights.

90. The representative of the Inuit Council of Nitassinan expressed the view that the permanent forum should provide formal mechanisms for the lodging of grievances and complaints by indigenous peoples who were subject to policies of extinguishment of indigenous rights to the land.

91. The representative of the Aboriginal Legal Service of Western Australia expressed the view that the mandate of the forum should include cultural, civil, political, social and economic rights, education and the environment. Furthermore, it should contribute to the resolution of conflicts between indigenous peoples and Governments, oversee the coordination of United Nations activities relating to indigenous peoples and disseminate information on the conditions of indigenous peoples. The forum should consist of an equal number of representatives of indigenous peoples and Governments, on the basis of equal geographical distribution. It should be established as a subsidiary body of the Economic and Social Council or the General Assembly.

92. In a joint statement, the National Aboriginal and Torres Strait Islander Legal Services Secretariat, the Aboriginal and Torres Strait Islander Commission and the Aboriginal Legal Service of Western Australia stated that funding for the forum should be allocated from the regular budget of the United Nations. However, the forum should be able to retain funds derived from voluntary contributions. With respect to the name of the forum, it should contain the term "forum". With regard to the location, it should be based in Geneva.

93. In a joint statement, the Saami Council and the Inuit Circumpolar Conference stated that the forum should be established as a subsidiary body of the Economic and Social Council and should be composed of an equal number of representatives of indigenous peoples and Governments, acting as full voting members on an equal basis. Furthermore, indigenous peoples, communities and organizations, non-governmental organizations and United Nations agencies and organs should be able to participate as observers. It was emphasized that indigenous peoples should be able to participate in the work of the forum regardless of whether they had consultative status with the Economic and Social Council. Individual experts should be allowed to participate in the

work of the forum if or when called upon by the forum. Finally, the forum, including its potential subsidiary bodies, should be funded from the regular budget of the United Nations.

94. The representative of the National Aboriginal and Torres Strait Islander Legal Services Secretariat (NAILSS) recalled a proposal contained in the report of the Copenhagen workshop that the permanent forum might be located within the structure of the Trusteeship Council of the United Nations. He proposed that international standard minimum rules for the treatment of indigenous persons by law enforcement agencies and courts of law and tribunals of inquiry should be developed within the framework of the permanent forum.

95. The representative of the Grand Council of the Crees (Eeyou Istchee) expressed the view that the permanent forum should consist of approximately 20 members, equally divided between representatives of Governments and of indigenous peoples. An executive committee consisting of four members chosen from among the members of the forum, with equal representation of Governments and indigenous peoples, would meet several times a year, supported by a permanent, full-time secretariat. The forum should be attached to the Office of the United Nations Secretary-General. With regard to the future role of the Working Group on Indigenous Populations, it was apparent that the World Conference on Human Rights had not intended to make the permanent forum and the Working Group on Indigenous Populations mutually exclusive. Moreover, it was contemplated that the two bodies would exist in the future: one an expert body nominated by Governments with a human rights mandate; the other a permanent forum, with a much larger scope.

96. At the final meeting of the working group, the representative of the Government of Sri Lanka made the following joint statement on behalf of the Governments of the Asian Group:

> "The Asian Group would like to elaborate below some preliminary views of the Asian Group on the question of a permanent forum for indigenous people for the purposes of the record and for inclusion in the report of the working group. (The term 'People/Peoples' has been used throughout the statement without prejudice to the views of individual Asian delegations on the matter.)
>
> "The Vienna Declaration and Programme of Action calls for the consideration of the establishment of a permanent forum for indigenous people. The Asian Group is happy to participate in this working group meeting. Most Asian Governments have yet to take a final position on the matter of the possible establishment of this permanent forum and, in general, are of the view that, in the interest of avoiding duplication, any such move should be accompanied by a decision on whether the Sub-Commission's Working Group on Indigenous Populations should continue to exist.
>
> "As many of the proposals under consideration call for a unique institution with no parallel in the United Nations system, several legal and conceptual issues need to be addressed. We would therefore call for an approach which blends caution with progress and provides adequate time for all Governments to consider these issues comprehensively.

"The Asian Group believes that the question of mandate and membership are the most important elements in the discussion on a possible permanent forum. The final views of the Asian Group on the forum will directly depend upon the nature of the mandate which is agreed upon, as well as how the question of membership is addressed. On the mandate, the Asian Group would like to express the view that the more ambitious the mandate, the more difficult it would be to find a consensus. With regard to the issue of membership, the two principles of 'representativeness' and 'legitimacy' must be respected. While it is important to involve all interested indigenous representatives, it may not be legally possible to provide a position of equality for these representatives with Governments in such a body. Any suggestion towards creativity in this matter must respect the above point.

"The above issue is also closely connected to the question of the definition of the term 'indigenous people/peoples'. Definition is a matter which the Asian Group has raised in discussions in the past. Our views in this regard must be taken into account as we make progress in our discussions on a possible permanent forum. At the same time, we would like to point out that the Asian Group has in the past taken a conscious decision not to use the issue of definition to block progress on the draft declaration on indigenous people. We are, therefore, open to holding further discussions on this matter with all concerned.

"It is clear to the Asian Group that there has not been a convergence of views on key issues between the government delegations and representatives of indigenous people, nor indeed amongst government delegations and indigenous representatives themselves.

"With this in mind, the Asian Group is of the view that the report of this working group should be distributed to all Governments and other interested parties for their comments and opinions. On this basis, a more detailed discussion can be had in future. We hope that in the meantime progress will also be made in the work of the working group on the draft declaration on the rights of indigenous people. The Asian Group is making these observations in a constructive spirit with the intention of developing a broad consensus."

97. The Chairman-Rapporteur pointed out that the working group had already resolved the issue of the expressions "indigenous peoples" and "indigenous people", and that both terms were used without prejudice to the positions of particular delegations. He said that a footnote in the report would address this matter.

Annex I

ISSUES AND SUGGESTIONS FOR FUTURE WORK IDENTIFIED BY THE CHAIRMAN-RAPPORTEUR ON THE BASIS OF THE DISCUSSIONS IN THE WORKING GROUP

On the basis of the discussions in the open-ended inter-sessional ad hoc working group on a permanent forum for indigenous people, the Chairman-Rapporteur identified a number of issues that met with sufficient support to serve as a basis for future work. Furthermore, a number of suggestions were made that should equally be reflected upon.

1. The establishment of a permanent forum for indigenous people in the United Nations system was broadly accepted. Some governmental delegations had not yet taken a final position.

2. The mandate of the forum should be broad and cover (all) issues affecting indigenous peoples.

3. Doubts existed whether the permanent forum should or should not have jurisdictional powers.

4. The mandate would include all human rights, including the right to development, and could cover thematic areas such as health, development, the environment, education, culture, children, gender and other relevant matters.

5. The permanent forum would:

Serve at least as an advisory body to the United Nations system, regional intergovernmental organizations and other interested parties;

Promote internal coordination within the United Nations system on indigenous issues, taking into account the overall coordinating role of the High Commissioner for Human Rights as coordinator for the International Decade and with regard to human rights issues;

Promote the interests and human rights of indigenous peoples;

Act as a focal point for matters concerning indigenous peoples;

Contribute to the definition of development strategies and policy guidelines;

Provide expertise and technical support to interested Governments;

Promote better understanding of indigenous concerns through the dissemination of information;

Organize seminars and expert group meetings on indigenous issues to support the work of the United Nations system;

Commission research on indigenous questions.

6. The working group considered that the permanent forum should take decisions on matters within its mandate. It could draft its own rules of procedure for subsequent approval, taking into account its specificity.

7. The working group noted that the forum should not duplicate the activities of other bodies or forums.

8. The permanent forum could be organized as an open assembly in which all Governments, indigenous peoples and organizations, international and regional intergovernmental organizations, non-governmental organizations and other experts or interested parties participate, with a "core group" or forum composed of a limited number of representatives of Governments and indigenous peoples, on an equal basis, representing all regions of the world in accordance with United Nations practice and reflecting the regions in which indigenous peoples live, that would bear responsibility. The permanent forum should work on the basis of consensus.

9. The working group had no specific recommendation concerning the selection, election or appointment of the members of the core group but concurred that they should be chosen on the basis of equitable distribution and in accordance with their own practices and customs.

10. The working group had no specific recommendation to make concerning whether the members of the core group should serve in their personal or official capacity.

11. The working group noted that the tripartite representation model of ILO might provide an example for future work. A number of Governments noted that national delegations consisting of both governmental and indigenous representatives could be envisaged.

12. The working group, in consideration of the broad range of issues to be covered, expressed a preference for attaching the permanent forum to the Economic and Social Council, either directly or indirectly. It noted, however, that the placement of the permanent forum would depend upon its final mandate.

Annex II

CHAIRMAN-RAPPORTEUR'S SUMMARY OF THE DEBATE ON: THE MANDATE AND TERMS OF REFERENCE; MEMBERSHIP AND PARTICIPATION; AND THE UNITED NATIONS BODY TO WHICH THE PROPOSED FORUM WOULD REPORT

Mandate and participation

1. In closing the third meeting of the session, the Chairman-Rapporteur summarized the debate pertaining to the mandate and the terms of reference as follows.

2. He noted broad acceptance among Governments for establishing a permanent forum for indigenous peoples within the United Nations, in either a shorter or a longer time framework. The Chairman-Rapporteur noted that no governmental delegation had expressed formal opposition to the establishment of a permanent forum for indigenous peoples within the United Nations system, although a number of Governments had stated that they had not yet taken a final position with regard to whether a new forum should be established, or whether it would be sufficient to broaden the mandate of the Working Group on Indigenous Populations.

3. The Chairman-Rapporteur referred to a number of United Nations declarations, resolutions and recommendations, including the Vienna Declaration and Programme of Action, and to resolutions of the General Assembly, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which could constitute "building blocks" for the mandate of the permanent forum.

4. Furthermore, the Chairman-Rapporteur noted that a number of Governments had expressed the view that the permanent forum should not duplicate the work of other United Nations bodies or organs. In that context, reference was made, inter alia, to the Working Group on Indigenous Populations. He indicated that in the history of the United Nations, bodies did continue to evolve and develop new functions and activities.

5. The Chairman-Rapporteur noted widespread agreement among participants that the mandate of the permanent forum should be broad and that it should cover all issues affecting indigenous peoples. A number of delegations proposed that the issues to be dealt with should be made explicit. He noted that all participants had agreed that all human rights, including the right to development, should be part of the mandate. He said that there was similar acceptance that the mandate of the permanent forum could be developed along the lines of that of the Economic and Social Council.

6. The Chairman-Rapporteur noted that many representatives of indigenous peoples were of the opinion that the mandate of the permanent forum should also include conflict prevention and resolution. However, he noted that a number of Governments had expressed the view that those issues were prerogatives of the United Nations Security Council, under Chapters VI and VII of the Charter of the United Nations.

7. With regard to the scope of action of the permanent forum, the Chairman-Rapporteur noted that there were varying degrees of acceptance of different possible functions. All seemed to agree that the permanent forum should have at least an advisory role. There was also general agreement that the forum should have the mandate to make recommendations to United Nations bodies and organs, regional organizations and interested parties.

8. Furthermore, the Chairman-Rapporteur noted that there was broad acceptance of a promotional role, including coordination and initiation, for the permanent forum, aimed at facilitating cooperation between Governments and the United Nations, as well as in defining strategies for the development of policies and programmes. Moreover, there was general acceptance of including promotion and protection of indigenous people's interests and rights as part of the scope of action of the permanent forum. With regard to coordination, the High Commissioner for Human Rights had two important tasks in this field, stemming from her role as Coordinator for the International Decade of the World's Indigenous People and from her mandate as laid down in General Assembly resolution 48/141.

9. The Chairman-Rapporteur noted that many representatives of indigenous peoples had expressed the view that the permanent forum should be given a policy-making role. However, many Governments had questioned, or expressed opposition to, that proposal.

10. The Chairman-Rapporteur said that it would be important to consider ways and means of cooperation and consultation between the permanent forum and existing bodies under the Economic and Social Council. He concluded from the discussion that all functional commissions were of relevance in that regard. Moreover, in addition to the five regional commissions of the Council, he also identified the three existing standing committees as being of relevance in this context.

11. The Chairman-Rapporteur stated that it seemed to be important to establish or strengthen cooperation and consultation between the permanent forum and relevant United Nations programmes and specialized agencies, such as the Convention on Biological Diversity, ILO, OHCHR, UNESCO, UNHCR, UNICEF, UNDP, UNEP, WHO, WIPO and the international financial institutions. In this context, he noted that many of these organizations had their own constitutions and governing bodies; that would prevent the permanent forum having a policy-defining role.

Membership and participation

12. In closing the fifth meeting of the session, the Chairman-Rapporteur summarized the debate pertaining to the membership and participation as follows.

13. The Chairman-Rapporteur expressed his satisfaction with the largely converging views put forward on the question of membership and participation in the permanent forum, although a number of questions remained to be resolved.

14. He would not be able to make use of the "building blocks" as he had in the discussion on the mandate, as a number of proposals were in "technical competition" with one another, rather than in "contradiction". For that reason, he would give a summary of the "largest common denominator".

15. For the purpose of furthering understanding, dialogue and partnership between Governments and indigenous peoples on all issues affecting indigenous people, the composition of the permanent forum might be as follows.

16. There could be a "core group" consisting of an equal and limited membership of Governments and indigenous peoples, with the right to take decisions on matters within the mandate of the permanent forum, as well as on procedural matters, such as setting its agenda and methods of work. The permanent forum should work on the basis of consensus.

17. Meetings of the permanent forum would be open to interested Governments, indigenous peoples' representatives, intergovernmental organizations, regional organizations and non-governmental organizations, as observers with the right to make statements and submit proposals. The permanent forum might seek technical and/or legal advice from experts if and when required.

18. Members of the "core group" could be selected, appointed or elected on the basis of nominations made by Governments and indigenous peoples' representatives respectively, reflecting an equitable distribution and in accordance with their own practices and procedures.

19. The Chairman-Rapporteur suggested that the rules of procedure of the permanent forum might be drawn up by the forum itself and approved by the appropriate forum.

20. Members of the "core group" would serve for a limited period on a rotating basis.

21. Members of the "core group" would serve either in an official or in a personal capacity.

22. The Chairman-Rapporteur noted that different models for the permanent forum were proposed by the participants. The ILO model was mentioned by several delegations, although he understood that there was also some opposition to that model.

23. The composition of the permanent forum had to be without prejudice to the status of the participants in any other international or national context.

The United Nations body to which the proposed forum would report

24. The Chairman-Rapporteur summarized the debate on questions relating to which United Nations body the proposed forum would report to, as follows.

25. The Chairman-Rapporteur noted that out of the debate the notion had emerged that the permanent forum should be linked in one way or another to the Economic and Social Council, taking into account the responsibilities and views of other bodies and organs. This would not prevent the permanent forum from reporting to other higher or lower United Nations bodies or organs. Whether that would have to be directly or indirectly was as yet undecided.

26. The views expressed in the working group did not constitute a formal position but rather a point of departure for future work. However, the exact placement of the permanent forum within the United Nations would have to be decided on the basis of the final outcome of the discussion on the mandate.

Annex III

SUMMARY OF THE DEBATE ON THE MANDATE, PREPARED BY THE DELEGATION OF MEXICO

The governmental delegation of Mexico was invited by the Chairman-Rapporteur to act as a co-facilitator on questions pertaining to the mandate of the permanent forum for indigenous people within the United Nations system. As a result of the consultations held by this co-facilitator and the statements of several governmental delegations, broad agreement was reached on, at least, the following seven points:

1. The mandate should be broad. Some of the delegations pointed out that the following aspects should be included in the mandate:

Health;
Environment;
Education;
Culture;
Human rights;
Resource management;
Housing;
Gender issues.

2. The permanent forum should provide a forum for dialogue. It should facilitate the exchange of views on indigenous questions between interested Governments, indigenous people and the United Nations system, including its specialized agencies, functional and regional commissions, treaty bodies, etc. Such a dialogue would include technical cooperation.

3. Advisory functions: the forum should:

(a) Organize seminars and expert workshops supporting the work of United Nations bodies in the field of indigenous issues, especially those relating to the International Decade of the World's Indigenous People;

(b) Provide expert advice to the United Nations Secretary-General and United Nations bodies and specialized agencies;

(c) Provide expertise and technical support to interested Governments, particularly for the design of programmes and projects pertaining to indigenous peoples; and

(d) Provide expertise and technical support to interested indigenous people.

4. Coordination: the permanent forum should promote better coordination of activities relating to indigenous people within the United Nations system.

5. Research: the permanent forum should undertake research on questions relating to indigenous people.

6. The permanent forum should disseminate information:

(a) On the concerns and needs of indigenous people;

(b) On national policies on indigenous people; and

(c) On the approach of the United Nations system on questions relating to indigenous people.

7. The forum should not:

(a) Have a role in dispute settlement and monitoring compliance with international instruments;

(b) Have jurisdictional faculties;

(c) Duplicate the activities of other forums, especially not the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, or

(d) Provide a confrontation forum instead of a cooperation mechanism.